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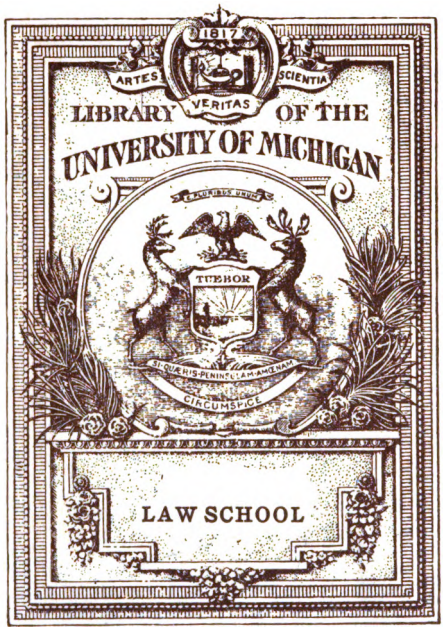

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Stat.

The following table shows the books at present comprising

McKINNEY'S
CONSOLIDATED LAWS OF NEW YORK, ANNOTATED.
1931.

(For list of books formerly in set but omitted because of repeal or substitution of new laws, see following page.)

1. REPORT OF CONSOLIDATORS, ETC.
2. CONSTITUTION OF NEW YORK ANNOTATED, ETC.
3a. ARBITRATION — Added to set in 1920.
4. BANKING.
5. BENEVOLENT ORDERS.
6. BUSINESS CORPORATIONS.
7. CANAL.
7a. CITY HOME RULE — Added to set in 1924.
8. CIVIL RIGHTS.
9. CIVIL SERVICE.
9a. CONDEMNATION — Added to set in 1920.
10. CONSERVATION — Recompiled 1928.
10a. CO-OPERATIVE CORPORATIONS — Added to set in 1926.
10b. CORRECTION — Formerly Prison. Title changed in 1929. Recompiled 1929.
11. COUNTY.
12. DEBTOR AND CREDITOR.
13. DECEDENT ESTATE.
14. DOMESTIC RELATIONS.
16. EDUCATION — Recompiled 1928.
17. ELECTION — Repealed and new Law enacted 1922.
17a. EMPLOYERS' LIABILITY — Added to set in 1930.
18. EXECUTIVE.
18a. FARMS AND MARKETS — Recompiled 1922. Title changed to Agriculture and Markets 1927.
19. GENERAL BUSINESS.
20. GENERAL CITY.
21. GENERAL CONSTRUCTION.
22. GENERAL CORPORATION — Recompiled 1929.
23. GENERAL MUNICIPAL.
24. HIGHWAY.
25. INDIAN.
27. INSURANCE.
28. JOINT-STOCK ASSOCIATION — Title changed to General Associations 1920.
29. JUDICIARY.
30. LABOR — Recompiled 1930.
31. LEGISLATIVE.
32. LIEN.
34. MEMBERSHIP CORPORATIONS.
34a. MENTAL HYGIENE — Formerly Insanity. Title changed 1927. Recompiled 1927.
35. MILITARY.
35a. MULTIPLE DWELLING — Added to set in 1931.
36. NAVIGATION.
37. NEGOTIABLE INSTRUMENTS.

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38. **PARTNERSHIP** — Recompiled 1923.
39. **PENAL.**
40. **PERSONAL PROPERTY.**
43. **PUBLIC BUILDINGS.**
44. **PUBLIC HEALTH.**
45. **PUBLIC LANDS.**
46. **PUBLIC OFFICERS.**
47. **PUBLIC SERVICE COMMISSION** — Title changed to Public Service 1930.
47a. **PUBLIC WORKS** — Added to set in 1923.
47b. **PUBLIC WELFARE** — Added to set in 1930.
48. **RAILROAD.**
49. **REAL PROPERTY.**
50. **RELIGIOUS CORPORATIONS.**
51. **SALT SPRINGS.**
52. **SECOND CLASS CITIES.**
53. **STATE BOARDS AND COMMISSIONS.**
54. **STATE CHARITIES** — Recompiled 1928.
54a. **STATE DEPARTMENTS** — Added to set in 1926.
55. **STATE FINANCE.**
56. **STATE.**
57. **STATE PRINTING.**
58. **STOCK CORPORATION** — Repealed and new Law enacted 1923.
59. **TAX** — Recompiled 1928.
60. **TENEMENT HOUSE.**
61. **TOWN.**
62. **TRANSPORTATION CORPORATIONS.**
62a. **VEHICLE AND TRAFFIC** — Added to set in 1929.
63. **VILLAGE** — Recompiled 1927.
64. **WORKMEN'S COMPENSATION** — Repealed and new Law enacted 1922.
65. **UNCONSOLIDATED LAWS.**
66. **TABLE OF LAWS REPEALED.**
67. **GENERAL INDEX.**

The following list shows books formerly included in the set, which have been omitted because of repeal or substitution of new laws:

3. **AGRICULTURAL** — Repealed 1922 and new Law, Farms and Markets, enacted in its stead. See Book 18a.
7a. **CITY LOCAL OPTION** — Repealed 1921.
15. **DRAINAGE** — Repealed 1921.
22a. **GENERAL HIGHWAY TRAFFIC** — Repealed 1929. See Vehicle and Traffic, Book 62a.
26. **INSANITY** — Title changed to Mental Hygiene 1927. See Book 34a.
33. **LIQUOR TAX** — Repealed 1921.
34a. **MENTAL DEFICIENCY** — Repealed 1927. See Mental Hygiene, Book 34a.
41. **POOR** — Repealed 1929. See Public Welfare, Book 47b.
42. **PRISON** — Title changed to Correction 1929. See Book 10b.

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Consolidated Laws of New York Annotated

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THE CONSOLIDATED LAWS OF NEW YORK

ANNOTATED

The books of this edition are arranged and numbered as follows:

1. REPORT OF CONSOLIDATORS AND TREATISE ON STATUTES AND STATUTORY CONSTRUCTION
2. CONSTITUTION OF NEW YORK ANNOTATED, CONSTITUTION OF THE UNITED STATES, DECLARATION OF INDEPENDENCE AND MAGNA CHARTA

3. AGRICULTURAL (*Repealed*)
— AGRICULTURE AND MARKETS (*See Farms and Markets*)
3a. ARBITRATION
4. BANKING
5. BENEVOLENT ORDERS
6. BUSINESS CORPORATIONS
7. CANAL
7a. CITY HOME RULE
7a. CITY LOCAL OPTION (*Repealed*)
8. CIVIL RIGHTS
9. CIVIL SERVICE
9a. CONDEMNATION
10. CONSERVATION
10a. CO-OPERATIVE CORPORATIONS
10b. CORRECTION
11. COUNTY
12. DEBTOR AND CREDITOR
13. DECEDENT ESTATE
14. DOMESTIC RELATIONS
15. DRAINAGE (*Repealed*)
16. EDUCATION
17. ELECTION
17a. EMPLOYERS' LIABILITY
18. EXECUTIVE
18a. FARMS AND MARKETS (*Now Agriculture and Markets*)
— GENERAL ASSOCIATIONS (*See Joint-Stock Association*)
19. GENERAL BUSINESS
20. GENERAL CITY
21. GENERAL CONSTRUCTION
22. GENERAL CORPORATION
22a. GENERAL HIGHWAY TRAFFIC (*Repealed. See Vehicle and Traffic Law.*)
23. GENERAL MUNICIPAL
24. HIGHWAY
25. INDIAN
26. INSANITY (*Now Mental Hygiene*)
27. INSURANCE
28. JOINT-STOCK ASSOCIATION (*Now General Associations*)
29. JUDICIARY
30. LABOR
31. LEGISLATIVE
32. LIEN
33. LIQUOR TAX (*Repealed*)
34. MEMBERSHIP CORPORATIONS
34a. MENTAL DEFICIENCY (*Repealed*)
34a. MENTAL HYGIENE
35. MILITARY
— MULTIPLE DWELLINGS (*See Tenement House, Supplement*)
36. NAVIGATION
37. NEGOTIABLE INSTRUMENTS
38. PARTNERSHIP
39. PENAL
40. PERSONAL PROPERTY
41. POOR (*Repealed. See Public Welfare*)
42. PRISON (*Now Correction*)
43. PUBLIC BUILDINGS
44. PUBLIC HEALTH
45. PUBLIC LANDS
46. PUBLIC OFFICERS
47. PUBLIC SERVICE COMMISSION
47a. PUBLIC WORKS
47b. PUBLIC WELFARE
48. RAILROAD
49. REAL PROPERTY
50. RELIGIOUS CORPORATIONS
51. SALT SPRINGS
52. SECOND CLASS CITIES
53. STATE BOARDS AND COMMISSIONS
54. STATE CHARITIES
54a. STATE DEPARTMENTS
55. STATE FINANCE
56. STATE
57. STATE PRINTING
58. STOCK CORPORATION
59. TAX
60. TENEMENT HOUSE
61. TOWN
62. TRANSPORTATION CORPORATIONS
62a. VEHICLE AND TRAFFIC
63. VILLAGE
64. WORKMEN'S COMPENSATION
65. UNCONSOLIDATED LAWS
66. COMPLETE TABLE OF LAWS REPEALED
67. GENERAL INDEX

The above is a list of the Consolidated Laws as constituted at the close of the regular session of the Legislature of 1930. Subsequent additions or changes will be noted in the list of laws printed on p. 3 of the Supplement to the General Index, Book 67.

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New York (State)
[Laws, etc. (Compiled statutes: 1916-)]

THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

AS AMENDED TO THE CLOSE
OF THE REGULAR SESSION OF
THE LEGISLATURE OF 1916

Compiled under the Editorial Supervision of
WILLIAM M. McKINNEY

BOOK 1

The Report of the Board of Statutory Consolidation
and a Preliminary Article on Statutes
and Statutory Construction

EDWARD THOMPSON COMPANY
Northport, New York
1916

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PREFACE

In an early and leading case[1] dealing with the interpretation of legislative enactments, Chancellor Walworth said: "The imperfections of human language, and the different modes of expression in use among different individuals, even of the same state or government, to convey their ideas, wishes and intentions to the minds of others, render it morally impossible that the language of any general legislative provision, which is intended to govern future cases, can be made so certain and explicit as not to admit of a doubt as to its proper interpretation or legal construction, when it is afterwards to be applied to the peculiar circumstances of some cases which may arise and may be brought before the judicial tribunal for decision, in reference to such statute." The design of this work is to present an accurate text of the Constitution and the Consolidated Laws, with notes which, in the language of the great chancellor, show their "proper interpretation or legal construction" so far as the decisions of the courts afford material for this purpose.

The scholarly and scientific work of the Board of Statutory Consolidation appointed pursuant to chapter 664 of the Laws of 1904[2] to "direct and control the revision, simplification, arrangement and consolidation of the statutes of the state," leaves little or nothing to be said here in explanation of the present state of the Laws, the form in which they are presented, and the history of earlier efforts to revise the statutes of New York. The "Report" made to the legislature in 1908 by this board in submitting its draft of the Laws, and the "General Note" accompanying the first volume of the report, cover such matters and (with some details of the report omitted) are set out immediately following this preface. They elucidate far better than any summary which might here be attempted the magnitude of the undertaking and the method by which, sweeping away old material, the present orderly statement of our statute law was "made a new starting point for general legislation in the state."

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[1] Mayor, etc., of New York v. Lord (1827), 18 Wend. 126.

[2] Adolph J. Rodenbeck, Charles Andrews, Judson S. Landon, William B. Hornblower and John G. Milburn were named by the act as members of the board. Judge Andrews resigned and Judge Landon died before the work was completed. Adelbert Moot was appointed by the Governor to fill the vacancy caused by the resignation of Judge Andrews.

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The arrangement of the original laws in this edition follows the alphabetical order in which they were reported to the legislature. This, with a few exceptions, corresponds to the numerical order of the chapters in the Laws of 1909. The laws added since that year have likewise been given their alphabetical position among the original chapters. The few general, permanent and public statutes not embraced in the consolidation, and those enacted since but not designated as new "laws" or made a part of any existing law, are gathered in one book at the close. The text of the laws and of all amendments is an exact reproduction of that found in the official session laws. Misprints and obvious legislative errors in language and section numbers are thus perpetuated, but footnotes in all such cases direct attention to the error and suggest the proper reading. In a few instances the legislature has added new sections to a law omitting the usual head or catch line. The editor has supplied these omitted lines and inclosed them in brackets, indicating that they are not a part of the words of the statute.

The editorial notes are of two classes: those pertaining to the source of the statute, the history of its origin and amendment and its relation to other laws or to other parts of the same law, and those presenting the holdings of the interpreting decisions. The source and historical notes give all that the Board of Statutory Consolidation reported of this nature, but the editors have, from other sources, greatly enlarged the extent of this kind of information, which is often vital to the proper understanding of the law and to intelligent consideration of the decisions. Where federal legislation runs along the same or similar lines, reference is made to the Acts of Congress and to important federal decisions. Examples of such references may be found in the Agricultural Law. Occasionally, where the connection is close, an entire Act of Congress is given as an appendix to a law, such as the Federal Reserve Act in the book devoted to the Banking Law. Another feature of this class of annotations is the inclusion of references to monographic notes in the well known series of annotated reports. Where there is a dearth of New York authority these special briefs on narrow points, reviewing cases from all jurisdictions, should prove of much value.

The principal annotations are those which set forth the rulings of the courts and the Attorney-Generals respecting the validity and application of the laws. Much labor and great care have been expended in an effort to attain completeness in the collection

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of cases which are analyzed and digested in these notes. To that end all New York Reports and Opinions of the Attorney-Generals from the earliest times were examined page by page by a trained force of searchers. A card index of constitutional and statutory references appearing in the decisions was thus obtained. By use of this index the bulk of the material for the preparation of the notes was secured. Many cases have been decided, however, interpreting statutes or giving aid in their construction, which do not specifically cite a particular act. References to such decisions also were indexed, and it is believed that few authorities which illuminate the constitution and laws are not reflected in the notes. The editors have exercised special care in citing the great number of older cases decided under statutes which have been repealed or substantially changed. It would have been easy to have disregarded these as inapplicable to the present state of the law, and perhaps no reflection could have been made on the work if such a course had been adopted. Not only have they been generally included but common law cases which are also informative to the seeker for light in construing the laws have likewise been cited. The notes do not, however, extend beyond legitimate statutory annotation. There is no pretense to cover the whole field of New York jurisprudence so far as topics are mentioned in the statutes or may be inferred from their scope. The terms of the laws themselves delimitate the efforts of the editors. The holdings of the interpreting decisions have, with due regard to economy of space, been stated in a manner which makes possible a complete understanding of the cases. The language of the opinions of the judges, when found in usable form, has been preferred in framing these statements. Black letter catch lines have been inserted throughout, and wherever the notes under one section are voluminous an analysis or schedule of contents facilitates consultation.

Preceding the annotated laws are two books of general application to all that follows — a treatise on Statutes and Statutory Construction and the Constitution annotated. The notes to the laws deal mainly with concrete applications of the statutes to particular situations which have arisen in actual litigation. But where new questions of interpretation arise counsel must apply the settled rules and canons of construction for the solution of their problems. It is the purpose of the article "Statutes and Statutory Construction" to afford this necessary aid. The profession have, it is true, comprehensive textbooks on statutes, but this treatise has been

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compiled entirely from New York decisions and these have been exhausted to a high degree. Several thousand authorities have been read and are cited, a large proportion of which are not readily available from other sources. The feature is not one ordinarily found in works of this kind and it is hoped that its value will be in proportion to the labor expended on it.

The decisions for annotating the constitution were collected in the same manner as those used in the notes to the laws, namely by a page to page examination of all reports. The wealth of material thus placed at the disposal of the compilers is evident in a book which, exhaustively it is believed, reviews the cases determined in the higher courts wherein the validity of legislation has been put to the test of constitutional requirements. Historical and source notes appended to each section explain the growth of the fundamental law. An article preliminary to the constitution, on the Rules of Constitutional Interpretation, corresponds to the article on statutes in the first book and will afford aid of a similar kind. The Constitution of the United States, the Declaration of Independence and Magna Charta are, for convenience, set forth in an appendix in this book.

Each book and law are separately indexed and the final book is devoted to a general index of all the laws. The consolidated table of laws repealed as found in the report of the Board of Statutory Consolidation and brought down to date is given in the book preceding the index volume. The form in which the work is published permits of separate annual cumulative supplements on a plan which it is believed will prove as serviceable as it is novel.

The satisfactory accomplishment of a task of this magnitude would not have been possible but for the assistance of the publishers' staff of skilled and experienced law writers and digesters. The bulk of New York case law is so vast and the mass of material with which the annotators were required to deal so overwhelming that great credit is due to their efforts. Special mention is due to the work of Harold N. Eldridge in compiling the text of the laws and the historical notes and of Herbert B. Hawes in revising the general annotations.

WILLIAM M. MCKINNEY.

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REPORT

OF THE

Board of Statutory Consolidation

ALBANY, N. Y., *February* 1, 1908.

To the Legislature:

The board of statutory consolidation was created by chapter six hundred sixty-four of the laws of nineteen hundred four, and since its creation has been collating, classifying and consolidating the general statutes of the state of a substantive character and performing such other work as was incidental thereto.

The board has embraced in its final report of the consolidated laws all of the general statutes of the state of a substantive nature which it found in the session laws beginning with the organization of the state and including the revised acts, the revised laws, the revised statutes and the original "general laws" of the state.

The text of the consolidated laws embraces all living substantive statutes of general operation, and the schedule of repeals a complete repeal of general substantive statutes not embodied in the text.

The consolidated laws represent a complete compilation of the general substantive statutes of the state, embracing six volumes and covering six thousand eight hundred and ninety-one pages.

It seems fitting that the board in presenting this report should take occasion to summarize the work heretofore done by the state on the classification, consolidation and revision of its statutes, to outline the methods employed by the board in preparing the consolidated laws, and briefly to refer to the work accomplished by the board, making such recommendations as may seem proper at this time.

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I. WORK DONE ON THE CONSOLIDATION AND REVISION OF THE STATUTES BEFORE THE CREATION OF THE BOARD OF STATUTORY CONSOLIDATION

The task imposed upon the board of statutory consolidation by the legislature cannot be appreciated without considering the immense volume of statute law in the state and without some understanding of the condition of this material at the time of the creation of the board.

Forty-seven laws were passed at the first session of the legislature and at the session of 1907 seven hundred sixty-four. The total number of laws passed during the one hundred thirty years of the history of the state, including the various revisions and the revised statutes, is over fifty thousand.

Numerous attempts have been made by the state from time to time to codify and classify the statute law.

Jones and Varick Revision

The first state constitution of 1777 had been in force but nine years when a revision of the laws was directed by the legislature. The state was then governed by the common law of England and Great Britain and the acts of the legislature of the colony of New York, except as abrogated by the constitution of 1777 or modified by the state legislature. In 1786 Samuel Jones and Richard Varick were appointed to "collect, revise and digest" the acts of the colony of New York and the laws of the state passed since the Revolution. The result of their work constitutes the first revision of our statute law and is commonly known as the "Jones and Varick" revision.[1]

Kent and Radcliff Revision

The first revision did not endure long. During the fourteen years following, three hundred eighty-three general laws were passed and a new revision was considered necessary. James Kent and Jacob Radcliff were then appointed "to collect and reduce into proper form, under certain titles, all the public acts of the Legislature of this State."[2] Their revision did not extend to acts

[1] L. 1786, Ch. 25.
[2] L. 1800, Ch. 70; L. 1801, Ch. 194

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unmodified by amendment, but the commission revised every public act which had been affected by subsequent legislation which could, with propriety, be revised. The revisers went further than codifying the public acts, and purported to treat in some form all the statutes of the state. Their work was practically completed in 1801 and was published in 1802 in two volumes, and is known as the "Kent and Radcliff" revision.

Van Ness and Woodworth Revision

In another ten years two thousand fifty-one new laws had been passed, of which one-half were public acts. To codify or rearrange these laws in connection with previous revisions was the labor of the third set of revisers, William P. Van Ness and John Woodworth. Their work was published in 1813, and is commonly known as the "Van Ness and Woodworth" revision.[1]

Revised Statutes

The constitution of 1821 made so many changes in the law that a new revision of the statutes became necessary, and in 1824 James Kent,[2] Erastus Root and Benjamin F. Butler were selected for that purpose. Resignations occurred until the commission finally consisted of John Duer, James C. Spencer and Benjamin F. Butler. The revision prepared by the commissioners was enacted at special sessions of the legislature and was published in three volumes. This revision constitutes the "Revised Statutes" of 1829.[3]

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[1] L. 1811, Ch. 150.

[2] L. 1824, Ch. 336; L. 1825, Ch. 324.

[3] The editions of the "Revised Statutes" are:

First.....	Official, 1829, 1830.
Second.....	Revisers, 1835, 1836.
Third.....	Revisers, 1846–1848.
Fourth.....	Hiram Denio, William Tracy, 1852.
Fifth.....	Amasa J. Parker, George Walford, Edward Wade, 1859.
Sixth.....	George W. Cothran, 1875.
Seventh.....	Montgomery H. Throop, 1882.
Eighth.....	Montgomery H. Throop, 1889.
Ninth.....	Charles A. Collin, 1896.

Statutes at large, commonly cited as Edmonds' Statutes, John W. Edmonds, 1863, 1868.

The Revised Statutes, Codes and General Laws of the State of New York, Clarence F. Birdseye, 1st ed., 1889; 2d ed., 1896; 3d ed., 1901.

General Laws of New York, Edward L. Heydecker, 1900; 2d ed., 1901.

General Laws and Other General Statutes of the State of New York, Cumming (Robert C.) and Gilbert (Frank B.), 1901 and supplements.

Act authorizing private publication of Revised Statutes, L. 1830, Ch. 259

See also L. 1830, Ch. 320; Matter of Norton, 39 App. Div. 371; Furnas v. Clute, 50 N. Y. 451; Matter of Kavanaugh, 125 N. Y. 418.

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Constitution of 1846

The constitution of 1846 directed the reduction to a written and systematic code of the whole body of the law of the state and a revision of the rules, practice, pleadings, forms and proceedings of the courts of record of the state.[1]

Code of Procedure

For eighteen years, from 1847 to 1865, various commissioners[2] labored to carry into effect the constitutional provisions, but the only part of the work accepted by the legislature was the "Code of Procedure," in 1848 and 1849, which constituted the practice act of the state for nearly thirty years. The commissioners who prepared this code were Arphaxed Loomis, David Dudley Field and David Graham, and it is usually referred to as the "Field Code."[3]

Code of Remedial Justice

In 1870, twenty-two years after the adoption of the "Field Code," efforts again were made to revise the statutes of the state.[4] Nothing was accomplished in the way of legislative enactment, except the passage of an act known as "The Code of Remedial Justice."[5] This was adopted in 1876, remained in operation for twenty-two days and then passed away "unwept, unhonored and unsung."

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[1] Constitution of 1846, Art. 1, § 17; Art. 17, § 24; L. 1847, Ch. 59; L. 1847, Ch. 98; L. 1847, Ch. 289; Joint Resolution, first appointing David Dudley Field, September 29, 1847; L. 1848, Ch. 379; L. 1849, Ch. 312; L. 1849, Ch. 438; L. 1850, Ch. 281; L. 1857, Ch. 266; L. 1860, Ch. 459; L. 1862, Ch. 460.

[2] Commissioners of Code, 1847, Reuben H. Walworth (declined to serve), Alvah Worden, John A. Collier, Anthony L. Robertson, Seth C. Hawley.

Commissioners of Practice and Pleading, 1847, Arphaxed Loomis, Nicholas Hill, Jr., David Graham, David Dudley Field.

Commissioners of Code, 1849, John C. Spencer, Alvah Worden, Seth C. Hawley.

The Commissioners of 1857, David Dudley Field, William Curtis Noyes, Alexander W. Bradford.

[3] A Penal Code and a Code of Criminal Procedure were also reported by this Commission, neither of which was adopted.

The Commission of 1857 submitted nine reports from 1857 to 1865, including, in 1860, a Political Code; in 1865, a Civil Code, a Penal Code and a "Book of Forms." None of these passed.

[4] L. 1870, Ch. 33; L. 1873, Ch. 467; L. 1876, Ch. 192.

[5] L. 1876, Ch. 448, Ch. 449; L. 1877, Ch. 318, Ch. 416.

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Code of Civil Procedure

The code of remedial justice was superseded by the code of civil procedure in 1877, which has continued to be the general practice of the state until the present time.[1]

Code of Criminal Procedure

In 1881 the penal code and the code of criminal procedure, which had been knocking at the gate of legislation for years, were admitted.

The code of criminal procedure was first reported by the practice commission of 1849. It was revised in 1879 by David Dudley Field, James Emott and Benjamin K. Phelps. In 1881, after waiting thirty-two years, it became a law.

Penal Code

The penal code was not reported as early as the code of criminal procedure. It was first reported in 1865, but was revised in 1879 by the same commissioners as the code of criminal procedure. It did not wait as long for recognition as the code of criminal procedure, but still it was sixteen years before it went on the statute books.

Banking Laws

In 1882 the banking laws were revised and enacted, having been compiled by William Dowd and Willis S. Paine,[2] who received the thanks of the legislature for their services.[3]

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[1] Revision Commissioners, 1870:

Francis Kernan (declined to serve).	Montgomery H. Throop.
Amasa J. Parker.	Charles Stebbins, Jr.
Nelson J. Waterbury.	Alexander S. Johnson.
Jacob I. Werner.	James Emott.
Sullivan Caverno.	

These Commissioners again reported the Political Code, the Civil Code, the Code of Criminal Procedure and the Penal Code, all of which were originally prepared by the Commissioners appointed under the acts of 1847 and 1857.

In 1870, David A. Wells, Lucius Robinson and Edwin W. Dodge were appointed to revise the Tax Laws. Robinson was succeeded by George W. Cuyler. Bill reported February 1, 1872, but was not acted on.

[2] L. 1880, Ch. 170; L. 1881, Ch. 445; L. 1882, Ch. 409.

[3] In 1887, David L. Follett, William Rumsey and David Dudley Field were appointed Commissioners to report a Code of Evidence. Reported February, 1889. Passed the Legislature, but died among other thirty-day bills.

Other Commissions to revise specified laws have been appointed as follows: In 1888, the Excise Laws; in 1890, the Game Laws; in 1895, the laws for government of cities of second and third classes; in 1898, the Tax Laws.

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Statutory Revision Commission

In 1889 the state returned to the attack and authorized the appointment of a commission to consolidate and revise the general statutes of the state. From 1889 to 1900 these statutes, which are called the "General Laws," were in process of preparation. Charles A. Collin, Isaac A. Maynard, Elihu C. Belknap, Daniel Magone, John J. Linson, Charles Z. Lincoln, William H. Johnson and A. Judd Northrup have constituted at various times the members of the commission. They sought to bring together into single laws all cognate subjects, giving each general law a chapter number. No attempt was made to codify or classify the special private or local acts.

General Laws Prepared by the Statutory Revision Commission and Passed by the Legislature

The labors of the commission, from 1889 to 1900, resulted in the enactment of forty-eight general laws as follows:

Chapter number	Short Title	When enacted
1...	The Statutory Construction Law.....	L. 1892, ch. 677.
2...	The State Law	L. 1892, ch. 678.
3...	The Civil Service Law.....	L. 1899, ch. 370.
5...	The Indian Law	L. 1892, ch. 679.
6...	The Election Law	L. 1896, ch. 909.
7...	The Public Officers Law.....	L. 1892, ch. 681.
8...	The Legislative Law	L. 1892, ch. 682.
9...	The Executive Law	L. 1892, ch. 683.
10...	The State Finance Law.....	L. 1897, ch. 413.
11...	The Public Lands Law.....	L. 1894, ch. 317.
13...	The Canal Law (improperly 13).....	L. 1894, ch. 338.
13...	The Salt Springs Law.....	L. 1892, ch. 684.
14...	The Public Buildings Law.....	L. 1893, ch. 227.
16...	The Military Code	L. 1898, ch. 212.
17...	The General Municipal Law.....	L. 1892, ch. 685.
18...	The County Law	L. 1892, ch. 686.
19...	The Highway Law	L. 1890, ch. 568.
20...	The Town Law	L. 1890, ch. 569.
21...	The Village Law	L. 1897, ch. 414.
22...	The General City Law.....	L. 1900, ch. 327.
24...	The Tax Law	L. 1896, ch. 908.
25...	The Public Health Law.....	L. 1893, ch. 661.
26...	The State Charities Law.....	L. 1896, ch. 546.
27...	The Poor Law	L. 1896, ch. 225.
28...	The Insanity Law	L. 1896, ch. 545.
29...	The Liquor Tax Law.....	L. 1896, ch. 112.

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Chapter number	Short Title	When enacted
30...	The Navigation Law	L. 1897, ch. 592.
31...	The Forest, Fish and Game Law	L. 1900, ch. 20.
32...	The Labor Law	L. 1897, ch. 415.
33...	The Agricultural Law	L. 1893, ch. 338.
34...	The Domestic Commerce Law	L. 1896, ch. 376.
35...	The General Corporation Law	L. 1890, ch. 563.
36...	The Stock Corporation Law	L. 1890, ch. 564.
37...	The Banking Law	L. 1892, ch. 689.
38...	The Insurance Law	L. 1892, ch. 690.
39...	The Railroad Law	L. 1890, ch. 565.
40...	The Transportation Corporations Law	L. 1890, ch. 566.
41...	The Business Corporations Law	L. 1890, ch. 567.
42...	The Religious Corporations Law	L. 1895, ch. 723.
43...	The Membership Corporations Law	L. 1895, ch. 559.
44...	The Benevolent Orders Law	L. 1896, ch. 377.
45...	The Joint Stock Association Law	L. 1894, ch. 235.
46...	The Real Property Law	L. 1896, ch. 547.
47...	The Personal Property Law	L. 1897, ch. 417.
48...	The Domestic Relations Law	L. 1896, ch. 272.
49...	The Lien Law	L. 1897, ch. 418.
50...	The Negotiable Instruments Law	L. 1897, ch. 612.
51...	The Partnership Law	L. 1897, ch. 420.

Bills Proposed by the Statutory Revision Commission but Not Passed by the Legislature

The commission sought to complete its labors in 1900 and presented to the legislature that year forty-nine bills, purporting to complete its plan of revision. These bills were of three classes: (*a*) proposed general laws; (*b*) amendments purporting to bring the general laws already enacted down to date, including general laws, which it was found necessary, in part, to rewrite; (*c*) the so-called "Code Bills," which carried out the plan of code separation adopted by the commission, including a rearrangement of the penal code and the code of criminal procedure.

General Laws Proposed by the Statutory Revision Commission but Not Passed by the Legislature

Chapter number.	Short Title
15.....	The Prison Law.
23.....	The Education Law.
52.....	The Wills Law.
59.....	The Estray Law.
	The Bill of Rights Law. (Prepared after session of 1900.)
	The Court of Claims Law. (Prepared after session of 1900.)

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Amendments to General Laws Proposed by the Statutory Revision Commission but Not Passed by the Legislature

Assembly number	Short Title
383.....	State Law.
1305.....	Indian Law.
1313.....	Public Officers Law.
886.....	Legislative Law.
1890.....	Executive Law.
751.....	State Finance Law.
403.....	Public Lands Law.
2170.....	Canal Law.
2169.....	Public Buildings Law.
174.....	General Municipal Law.
1296.....	County Law.
2391.....	Highway Law.
1297.....	Town Law.
1439.....	Public Health Law.
724.....	State Charities Law.
434.....	Poor Law.
700.....	Agricultural Law.
356.....	Domestic Commerce Law.
1442.....	General Corporation Law.
1610.....	Banking Law.
1615.....	Insurance Law.
394.....	Railroad Law.
719.....	Transportation Corporations Law.
1731.....	Business Corporations Law.
713.....	Religious Corporations Law.
714.....	Membership Corporations Law.
1304.....	Real Property Law.
387.....	Personal Property Law.
2076.....	Domestic Relations Law.
722.....	Lien Law.
389.....	Partnership Law.
1306.....	Consolidation Act of New York.
435.....	An act to repeal, etc.

"Code Bills" Proposed by the Statutory Revision Commission but Not Passed by the Legislature

Assembly number	Chapter number	General Laws
1303.....	4.....	The Naturalization Law.
(Prepared after session of 1900.)		The Drainage Law.
402.....	55.....	The Insolvent Debtor's Law.
810.....	58.....	The Condemnation Law.
355.....	54.....	The Jury Law.
173.....	56.....	The Evidence Law.
172.....	57.....	The Statute of Limitations.
521.....	53.....	The Judiciary Law.

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Assembly number	Codes
241	The Justice's Code.
137	The Surrogate's Code.
952	The Code of Civil Procedure.
	The Code of Criminal Procedure.
	The Penal Code.

Assembly Committee of 1900

On January 26, 1900, in accordance with a suggestion of Governor Odell [1] a resolution was adopted by the assembly authorizing the speaker to appoint a committee of seven to which should be referred all bills prepared by the statutory revision commission. February 1, 1900, the speaker announced the following committee: Messrs. Rodenbeck, Rogers, Sands, Fallows, Slater, Green and Phillips.

This committee compared with the existing laws many of the codification bills presented by the commission to the legislature of 1900 and reported some of the bills to the assembly. Several were passed in the assembly and sent to the senate.

Joint Legislative Committee of 1900

All but four of the bills presented by the statutory revision commission to the legislature of 1900 failed to pass, and at the close of the session a joint committee of the legislature, consisting of three senators and five assemblymen, was authorized to consider the bills of the statutory revision commission and report thereon to the legislature of 1901. This committee consisted of Messrs. Edgar T. Brackett, George R. Malby and Thomas F. Grady, representing the senate, and Messrs. Adolph J. Rodenbeck, James T. Rogers, Edward H. Fallows, Joseph I. Green and N. Taylor Phillips, representing the assembly.

The joint committee immediately directed its attention to the bills which had been referred to it.

The statutory revision commission had indicated in each bill the changes from the existing law, but the committee, feeling unwilling to base its judgment upon these notes, began the comparison of the proposed amendments with the original statutes.

Each bill submitted by the commission was carefully compared with the statutes from which it was derived, and variations from the original were indicated by pen and ink corrections, except

[1] Governor Odell did not take office until Jan. 1, 1901.— Ed.

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where so extensive as to make necessary the insertion of typewritten slips setting forth the original law at length. The tables of repeals at the end of the proposed laws also were checked up with the statutes purported to be included in the codified laws. Eight duplicate sets of the forty-nine laws were bound into volumes in the order of their chapter numbers, making three hundred and ninety-two laws prepared for submission to the members of the committee.

When the committee began the examination of these bills for report to the legislature the question at once arose whether or not the proposed general laws and amendments contained all of the statutes of a general character in existence. Upon inquiry the commission stated that their general laws had been derived from editorial compilations of the statutes, upon the ground that the editors could be relied upon to have collated, by note or otherwise, all the general statutes of the state.

The committee, therefore, undertook a page to page examination of the session laws, covering every statute ever passed by the legislature, for the purpose of making a recommendation as to the disposition of each law and a classification of all the laws.

Joint Legislative Committee's Plan of Treatment of the General and Special Statutes

A thorough revision of the general statutes was recommended by the joint committee of the legislature which would cover the entire field of legislation and would be based upon a page to page examination of the session laws, and which would

(1) *Make the general laws comprehensive.*

(2) *Specifically repeal all obsolete, contradictory and unnecessary laws.*

(3) *Classify all remaining laws.*

While the work of examining the bills and the session laws was under way, the committee was considering the plan of code revision proposed by the commission.

The commission proposed to separate the code into eleven codes and laws. Their plan was opposed, upon the ground that it did not embrace a revision of the practice provisions, and because it made necessary looking in several places to find the general provisions governing practice.

The strongest opponent of the commission's plan of revision

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was the New York state bar association, which advocated a short practice act covering jurisdictional matters mainly, leaving the details of practice to be controlled by rules of court, like the system in England. Objections were urged to the plan of the association, upon the ground that it vested in judicial officers legislative functions, which was un-American and not suited to our system, and that it was inconvenient, because it made more than one practice act.

The committee determined upon a plan which would obviate, in a large measure, the objections urged against the plans heretofore referred to and which would commend itself to the best judgment of the members of the bench and bar and the people of the state.

Plan of Code Treatment of the Joint Committee of the Legislature

The following plan of code revision was suggested by the joint committee of the legislature:

(1) *To eliminate from the code all matters not relating directly to practice and to assign the material so removed to a place in the general laws.*

(2) *To make such obviously necessary changes in pleading and practice as may be agreed upon by the authority making the revision, after conference with the bench and bar.*

(3) *To reduce the general practice provisions to a single brief legislative practice act.*

The plan of the legislative committee received very general indorsement. Resolutions approving of it were adopted by the following bar associations of the state or by committees representing them: Albany county bar association, Rochester bar association, Erie county bar association, Association of the bar of the city of New York, with the reservation that the proposed revision should be "presented to the legislature at one and the same session with a view to simultaneous enactment, and, furthermore, that the recommendation with reference to the enactment of a brief legislative practice act shall not be understood to abrogate the power of the court as it now exists to adopt rules of practice," Brooklyn bar association and the New York state bar association, reiterating, however, its "preference that the details of practice shall be in the form of rules of court."

In addition to these formal resolutions of approval many letters

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and other expressions of approbation were received, some being sent to the chairman of the joint committee, and others to Governor Odell, urging the continuance of the work. Among those who approved of the plans of the committee were judges of the court of appeals, justices of the appellate division and supreme court, and other members of the bench, beside numerous prominent members of the bar throughout the state.

ALBANY, *January* 2, 1901.

Hon. A. J. RODENBECK, *Rochester, N. Y.*

Dear Sir:— It affords me pleasure to be able to inform you that the Albany County Bar Association at a meeting held this afternoon unanimously adopted the following resolution:

"Resolved, That this association approves of the plan of Code and Statutory Revision adopted by the joint committee of the legislature and advises its adoption."

Very respectfully,
J. C. E. SCOTT,
Secretary Albany County Bar Association.

At a meeting of the committee on the judiciary and legal reform of the Rochester bar association, held on the 8th day of January, 1901, at 4 P. M., Chairman Wm. A. Sutherland presiding, the following resolution was passed:

Resolved, That the law committee of the Rochester bar association hereby approves of the plan of Code and Statutory Revision adopted by the joint committee of the legislature as follows:

First.—As to the Code of Civil Procedure.

1. Eliminate from the present Code all provisions not relating directly to practice, assigning the material so removed to a place in the General Laws.
2. Make such obviously necessary changes in pleading and practice as may be agreed upon by the authority making the revision after conference with the bench and bar.
3. Reduce the general practice provisions to a single brief legislative practice act.

Second.—As to the General Laws.

A revision, based upon a page to page examination of the Session Laws, which will

1. Make the General Laws comprehensive.
2. Specifically repeal all obsolete, contradictory and unnecessary laws.
3. Classify all remaining laws.

EUGENE VAN VOORHIS,
Secretary of the Committee.

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To Hon. A. J. RODENBECK, *Chairman Joint Committee of the New York State Legislature on Statutory Revision Commission Bills.*

Sir:—At a meeting of the legislative committee of the Erie County Bar Association, held at Buffalo, N. Y., on the 12th day of January, 1901, the following resolution was adopted:

Resolved, That this committee hereby approves of the plan of code and statutory revision of the joint committee of the legislature as follows:

First.—As to the Code of Civil Procedure.

1. Eliminate from the present Code all provisions not relating directly to practice, assigning the material so removed to a place in the General Laws.
2. Make such obviously necessary changes in pleading and practice as may be agreed upon by the authority making the revision after conference with the bench and bar.
3. Reduce the general practice provisions to a single brief legislative practice act.

Second.—As to the General Laws.

A revision, based upon a page to page examination of the Session Laws, which will

1. Make the General Laws comprehensive.
2. Specifically repeal all obsolete, contradictory and unnecessary laws.
3. Classify all remaining laws.

It being understood, however, that the proposed revisions embodied in said plan shall all be presented to the legislature at the same session with a view to simultaneous enactment, and furthermore, that the recommendation of your committee with reference to the enactment of a brief legislative practice act shall not be understood to abrogate the power of the court as it now exists to adopt rules of practice.

Yours, etc.,
TRACY C. BECKER,
Chairman.

Attest,
GEO. H. KENNEDY,
Secretary.

NEW YORK, *December* 27, 1900.

Hon. A. J. RODENBECK, *Rochester, N. Y.*

Dear Mr. Rodenbeck:—A copy of your letter, sent to Mr. Fiero at Albany, and dated December 19th, was laid before the committee on the amendment of the law of the association of the

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bar of this city at a meeting held on the 27th inst. I am instructed by the committee to state that the general plan outlined in your letter to Mr. Fiero meets with its approval, it being understood, however, that the proposed revisions referred to in your letter shall all be presented to the legislature at one and the same session, with a view to simultaneous enactment, and furthermore that the recommendation with reference to the enactment of a brief legislative practice act shall not be understood to abrogate the power of the court as it now exists to adopt rules of practice.

Respectfully yours,
CHAS. BULKLEY HUBBELL,
Secretary.

(Letter of the Chairman of the Committee referred to above.)

ROCHESTER, N. Y., *December* 19, 1900.

Hon. J. NEWTON FIERO, 51 *State Street, Albany, N. Y.*

Dear Sir:— In answer to your inquiry with reference to the plan of code and statutory revision that I shall urge upon the joint committee at its next session, I beg leave to say that I shall favor the following plans:

First.— As to the Code of Civil Procedure.

1. Eliminate from the present Code all provisions not relating directly to practice, assigning the material so removed to a place in the General Laws.
2. Make such obviously necessary changes in pleading and practice as may be agreed upon by the authority making the revision after conference with the bench and bar.
3. Reduce the general practice provisions to a single brief legislative practice act.

Second.—As to the General Laws.

A revision, based upon a page to page examination of the Session Laws, which will

1. Make the General Laws comprehensive.
2. Specifically repeal all obsolete, contradictory and unnecessary laws.
3. Classify all remaining laws.

I believe that the revision of the Code and the General Laws should go hand in hand and that no revision can be complete which does not dispose of all laws.

Very respectfully yours,
A. J. RODENBECK,
Chairman.

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ALBANY, N. Y., *December* 26, 1900.

Hon. A. J. RODENBECK, *Rochester, N. Y.*

Dear Mr. Rodenbeck:—I desire to inform you that the following resolution has been adopted by the committee on law reform of the New York State Bar Association:

Resolved, That the committee on law reform of the New York State Bar Association approves of the plan of code and statutory revision suggested by the chairman of the joint committee of the legislature, and urges its adoption.

Yours respectfully,
J. NEWTON FIERO,
Chairman.

Resolved, That the law committee of the Brooklyn Bar Association hereby approves of the plan of code and statutory revision adopted by the joint committee of the legislature as follows:

First.—As to the Code of Civil Procedure.

1. Eliminate from the present Code all provisions not relating directly to practice, assigning the material so removed to a place in the General Laws.
2. Make such obviously necessary changes in pleading and practice as may be agreed upon by the authority making the revision after conference with the bench and bar.
3. Reduce the general practice provisions to a single brief legislative practice act.

Second.—As to the General Laws.

A revision, based upon a page to page examination of the Session Laws, which will

1. Make the General Laws comprehensive.
2. Specifically repeal all obsolete, contradictory and unnecessary laws.
3. Classify all remaining laws.

Dated January 14, 1901.

H. C. M. INGRAHAM,
Chairman of Law Committee.

"Resolved, first, that this Association approves of the plan of statutory and code revision adopted by the joint committee of the legislature of 1900, but reiterates its preference that the details of practice should be in the form of rules of court.

"Second, that this Association recommends the postponement of action on any of the bills presented to the legislature of 1900 by the statutory revision commission and of any and all legislation of like character emanating from such commission until such

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time as it has been thoroughly examined and revised." Adopted January, 1901. (*Resolution of New York State Bar Association.*)

Assembly Committee of 1901

On February 21, 1901, a special committee on statutory revision commission bills was again appointed in the assembly consisting of A. J. Rodenbeck, James T. Rogers and James E. Smith.

This committee reviewed the work done theretofore on the revision of the statutes and recommended in addition to what had been recommended previously:

(1) *A complete history of each law.*

(2) *A subject matter index of the laws.*

(3) *A classification of all special laws not included in the general laws.*

II. WORK ACCOMPLISHED BY THE BOARD OF STATUTORY CONSOLIDATION ON THE CLASSIFICATION, CONSOLIDATION AND REVISION OF THE STATUTES

The statutory revision commission was abolished by chapter 664 of the laws of 1900, which repealed not only the act authorizing the appointment of the commissioners but the act creating a commission to revise the code of civil procedure. The repeal of these statutes left the work of classifying, consolidating and revising the statutes in an unfinished condition.

Classification of the Statutes

In this condition of affairs the legislature passed chapter 664 of the laws of 1904, creating the board of statutory consolidation.

(1) *Statute Creating the Board of Statutory Consolidation*

An Act to provide for the consolidation of the statutes of the state.

Became a law May 9, 1904, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. A board of statutory consolidation is hereby constituted to consist of Adolph J. Rodenbeck, Charles Andrews, Judson S. Landon, William B. Hornblower and John G. Milburn,

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or such other persons as may be appointed by the Governor in case of vacancy. The duty of such board shall be to direct and control the revision, simplification, arrangement and consolidation of the statutes of the state as hereinafter provided.

§ 2. The plan and scope of the work shall follow that adopted in the General Laws, so far as practicable. The statutes shall not be changed in substance except that as to matters of procedure such board shall report for enactment such amendments as it may deem proper and necessary to condense and simplify the existing practice and as shall adapt the procedure to existing conditions.

§ 3. The consolidation of the statutes herein provided for shall be carried on under the direction and control of said board by such persons as it shall designate and employ for that purpose whose compensation and necessary expenses shall be fixed by said board and paid by the comptroller on the certificate of the chairman or such other executive officer thereof as may be designated by said board, from any appropriation that may be made for that purpose. The members of said board shall serve without compensation, but shall receive their necessary expenses and disbursements incurred in the discharge of their duties either at the capital or elsewhere which shall be paid in the same manner as the compensation and expenses of persons employed by said board.

§ 4. The board shall cause its work to be printed from time to time, and distribute copies of the same to members of the legislature, judges of the courts, and such other persons as it may see fit for the purpose of obtaining their suggestion and advice. It shall report annually to the legislature upon the progress of the work and shall make its final report of the statutes so consolidated for enactment to the legislature of nineteen hundred and seven. The printing for said board may be done by the legislative printer and payment therefor shall then be made out of the appropriation for legislative printing. Such board shall not be charged with the duty of advising as to current legislation.

§ 5. Such board in its final report to the legislature shall suggest such contradictions, omission and imperfections as may appear in the original text, with the manner in which they have reconciled, amended or supplied the same. It shall also designate such statutes, or parts of statutes, as in its judgment ought to be repealed, with the reasons for such repeal, and may also recommend the enactment of any acts, or parts of acts, which such repeal may, in its judgment, render necessary.

§ 6. The sum of thirty-two thousand five hundred dollars is hereby appropriated out of any moneys in the treasury not otherwise appropriated for the purpose of carrying out the provisions of this act up to the first day of June, nineteen hundred and five, to be expended in the manner herein provided.

§ 7. This act shall take effect immediately.

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The board considered the completion of the consolidation of the general statutes as of the first importance and directed its immediate attention to the "General Laws." To ascertain what general statutes still remained unconsolidated involved a page to page examination of the session laws. No satisfactory inventory could otherwise be made. The existing indexes of the session laws were deficient and it was not deemed advisable to rely upon editorial compilations of the statutes. It was the idea of the board that such general statutes as had not been consolidated heretofore should be gathered from the session laws once for all and a compilation prepared that would leave no doubt as to its completeness.

(2) *Statutory Examiners Employed by Board*

The statute creating the board required it to make its final report within three years, and in order to insure the completion of the work within that time the board adopted the plan of distributing the volumes of the session laws for a page to page examination for general provisions, as by this method alone could it be sure as to the time within which the examination could be done. The scheme was expansive and if pressed for time a sufficient number of additional examiners could be employed to hasten the work. The session laws therefore were distributed among competent lawyers in different parts of the state with instructions to go through the volumes page by page and abstract, by cutting from the volumes, provisions of a general nature whether found in a general or a special statute, and at the same time to prepare the historical record of the statutes selected for consolidation.

(3) *Card System Used by Board*

For the purposes of this examination a card system was originated which would enable the board to bring together kindred statutes when the examination of the session laws was completed. Upon these cards the substance of general provisions in the session laws was actually pasted so that there could be no chance for errors in copying the material and also to facilitate the work, and upon each card appropriate annotations were made.[1]

Examination and Preparation of Consolidated Laws by the Board

As already stated the board utilized in preparing the consolidated laws men who were especially skilled in particular fields. After the consolidated laws had been thus prepared the board began its examination and correction and the consolidated laws were modified to a very large extent and in many cases entirely

[1] Here follow in the report statements and illustrations of the methods followed by the board and the directions to the statutory examiners.

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rearranged. The board has constantly employed an office force which has been checking and verifying the work as it progressed. New consolidated laws such as the civil rights law, debtor and creditor law, decedent estate law, education law, judiciary law and prison law were prepared under the personal direction of the board or its chairman.

There were certain provisions relating to civil rights which had never been brought together in any consolidated law. Some of these were to be found in the revised statutes and others were distributed in independent statutes enacted since the passage of the revised statutes. The board has therefore prepared a Civil Rights Law which embraces those principles in organized society commonly expressed in documents known as bills of rights and which also embraces such other related principles as have not found expression in any of the other consolidated laws. This law does not duplicate any principles of fundamental rights contained in the state constitution but supplements those principles by the consolidation of such as are distributed in isolated statutes of the state.

The Debtor and Creditor Law is proposed as a new chapter of the consolidated laws. This law was made necessary by the fact that there existed independent statutes not contained in the general laws or code of civil procedure which could not be assigned to any present general law. It contains the "general assignment act" being laws 1877, chapter 466, provisions relating to the debts of incompetent persons being laws 1893, chapter 697, provisions from the revised statutes relating to trustees of insolvent and imprisoned debtors, and various articles from the code of civil procedure relating to an insolvent's discharge from debt, an insolvent's arrest and discharge from imprisonment, and a judgment debtor's discharge from imprisonment. It was deemed expedient and convenient to place these and other matters in this new law. The name of the chapter was adopted as one which is commonly used as a heading in digests and legal works.

There are in the revised statutes certain matters relating to the execution of wills which have not been brought together in any consolidated law, and these provisions with certain other matters relating to estates of decedents have been collated in the Decedent Estate Law. It has always been a source of inconvenience to have the statute of descent in the real property law and the statute of distribution in the code of civil procedure. These two statutes have been incorporated in the decedent estate law. In article four

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the board has incorporated certain matters relating to executors, administrators and testamentary trustees. There are many matters in the code of civil procedure of a more or less substantive character relating to these subjects which might have been inserted under this article but it has been deemed best to leave them where they now are until such time as the code shall be revised. When that time arrives these provisions can be readily assigned to this article.

The provisions of the revised statutes relating to drainage as well as several general statutes on that subject not contained in the revised statutes have been consolidated in the Drainage Law. These provisions with amendments to date have been harmonized and consolidated in this law without change of substance. Following the ruling of the court of appeals in the Matter of Tuthill, 163 N. Y. 133, laws 1895 chapter 384, laws 1896 chapter 502 and laws 1897 chapter 168 have been omitted as unconstitutional.

The Education Law was prepared for the purpose of bringing together the large number of independent general statutes relating to the subject of education. These matters are now regulated by the consolidated school law, the university law and a large number of independent statutes relating to subjects and institutions which either directly or indirectly come within the jurisdiction of the department of education. The education law brings together these provisions as they exist to date without material change. This law is the result of an examination of all statutes enacted during the one hundred and thirty years of legislation beginning with the first chapter enacted in 1778 and ending with the last one in 1907.

The old domestic commerce law has always been a source of speculation as to what it contained. The name was a misnomer in that the law was not confined to domestic commerce. It contained a miscellaneous mass of legislation arranged according to no particular analysis. The law is a sort of miscellaneous law and it was deemed best by the board to change its name to General Business Law, a title which would suggest in a general way the character of the law. The material in the old domestic commerce law with such new matter as had been assigned to that law has been rearranged upon a new classification which will be found much better than the old one.

The name of the statutory construction law has been changed to the General Construction Law. This was necessary to make its designation broad enough to cover provisions in the law such

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as sections 25, 31 and 58 relating to the construction of contracts and other instruments. The statutory construction law was not limited to the construction of statutes but included private instruments as well. While the statutory construction law was intended to provide generally rules for construing statutes and contracts there were attached to many of the original general laws construction clauses in most cases identical with those contained in the statutory construction law. This repetition is not necessary and in framing the general construction law the duplication has been avoided. So far as there are any construction clauses in any of the original general laws similar to those in the general construction law they have been repealed. The rule followed in framing the general construction law was to have it embrace all of the construction clauses applicable to the consolidated laws. In twenty-nine of the original general laws there were no saving or construction clauses, in ten of them there were substantially the same saving clauses, in five there were different saving clauses, and in six there were construction clauses which were substantially the same. This want of system has been remedied in compiling the consolidated laws and no construction clauses will be found in the separate consolidated laws except in one or two instances where they were necessary. The notes to the general construction law show the provisions of the original general laws which have been omitted as covered by the general construction law. The material of the statutory construction law has been rearranged in the general construction law and for convenience and clearness the longer sections have been broken into two or more sections.

Considerable additional matter has been inserted in the General Corporation Law for the purpose of bringing together so far as possible the provisions relating generally to corporations. Most of the added matter is in the nature of actions and proceedings relating to corporations. The provisions in the code of civil procedure relating to changing the name of a corporation and the sale of corporate real property have been inserted as well as the various articles in the code of civil procedure relating to the judicial supervision of corporations and the officers and members thereof, actions for sequestration, for dissolution, for annulment and proceedings for voluntary dissolution. The proceedings in the stock corporation law relating to the voluntary dissolution of a stock corporation without judicial proceedings have been consolidated in this chapter as well as some provisions relating to the dissolution of moneyed corporations which are now in the form of

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an independent statute. There have also been added to the law as a separate article the provisions relating to the powers, duties and liabilities of receivers. The latter article is an exceedingly important one since it gathers together in one place the general provisions relating to the powers, duties and liabilities of receivers of corporations which are now scattered along the road of legislation from the revised statutes to the legislation of last winter. There is no subject of the law so important as the subject of receivers and there is none that is so perplexing and confusing. The board has attempted to bring these matters together without change of substance and this work will prepare the way for such revision of our corporation laws as may be necessary. As now proposed the general corporation law answers the purposes of a "winding up act" and is a distinct advance on the form of the old general corporation law.

The Judiciary Law is a new consolidated law designed to embrace certain substantive matter in the code of civil procedure and other statutes relating to courts and officers thereof including jurors so far as relates to the selection of jurors for a term of court. It is composed for the greater part of substantive material from the code of civil procedure relating to the organization of the court of appeals, the appellate division, the supreme court and the county court, and the powers and duties of the members and officers thereof. Many independent statutes relating to these courts have been included and here will also be found, under their respective heads, the salaries to be paid to the judges of the courts and to the other officers connected with the courts which are now scattered through numerous statutes passed during the last forty years. The material inserted in this law has been classified in order to bring related matters together; for example, under the heading "Court of Appeals" will be found sections outlining the organization of the court, fixing the salaries of the judges and stating the general functions of the judges including their powers and duties as to the appointment and removal of clerks, reporters, attendants and other officers. The provisions pertaining to the powers, duties and compensation of these officers will be found under their respective articles. The code provisions relating to the selection of trial jurors for a term and procuring their attendance have been placed in this law as well as those relating to civil and criminal contempts and the procedure for the collection of fines imposed by courts of record. Among the notes will be found a table showing where sections of the code of civil procedure have

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been consolidated in the judiciary law. Where only a part of the code section has been consolidated, the part consolidated is indicated in the schedule of repeals. All the material contained in the judiciary law has been consolidated without intended change of substance.

The Penal Law is a rearrangement of the "Penal Code," without intended change of substance. The alphabetical plan has been followed for the arrangement of the material as best adapted to the character of the provisions of the code. The name has been changed to conform to the nomenclature of the consolidated laws. There is attached to the law a table showing amendments and repeals and additions to the penal code and a table showing the provisions of the revised statutes, session laws and code of civil procedure that are consolidated in the penal law. This law has not been printed in the volumes with the consolidated laws but has been published separately.

There are in the session laws many general statutes relating to prisons, penitentiaries and like institutions that have never been consolidated in a "General Law." It was necessary to prepare a consolidated law to take care of these provisions and the Prison Law has been compiled for the purpose of bringing together these provisions in a single law by incorporating the live matter in the text and the dead matter in the schedule of repeals.

The Public Service Commissions Law passed during the session of 1907 has been included among the consolidated laws without change.

The uniform charter of cities of the second class has been included among the consolidated laws under the shorter caption of Second Class Cities Law. No change in arrangement or substance has been made in this law.

The State Boards and Commissions Law embraces provisions relating to state boards and commissions which could not be assigned appropriately to any other consolidated law and which it has been deemed best not to arrange into a separate law. It includes the provisions relating to the state water supply commission, the state probation commission, commissioners for the promotion of uniformity of legislation and commissioners of water power on Black river.

The State Law will be found to contain considerable additional matter. It was intended to include in the text of this law the boundaries of the counties of the state. These statutes have not been consolidated as a part of the text, however, because of the

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impossibility of any satisfactory consolidation. The complete boundaries of the counties of the state were last compiled and presented as a part of the revised statutes of 1829. The presentation of the boundaries of the counties of the state was made possible at that time by the fact that the revisers were authorized to procure a survey of each county if necessary, in order to present a description of its boundaries. Since the enactment of the revised statutes counties have been divided, boundary lines have been changed, names of towns and objects of boundaries have been altered and towns have been transferred from one county to another without definite description of boundaries. The statutes making the changes in the boundaries of counties are presented in the notes to the state law without attempted consolidation. So many changes have been made that it would not be wise for the board to attempt a redescription of boundary lines without official action by either state or local officers. The state engineer and surveyor has authority to require the supervisors of counties to present to him boundaries of their respective counties, and before any consolidation of the statutes upon this subject is attempted the boundaries of each county should be secured from the local authorities and verified by the state engineer and surveyor. For these reasons the board has not consolidated the boundaries of counties in the text but presents the statutes as they are found in the session laws in the notes to the text for such action thereon as to the legislature may seem best.

The Tenement House Law is a consolidation of laws 1901, chapter 334, and the amendments thereto inclusive of the legislation of 1907. The consolidation has been made without rearrangement of the topics covered except in a few instances where a combining of sections relating to like subjects has appeared to be advantageous. No change has been made in either the substance or effect of the statutes consolidated, and the alterations in phraseology and the numbering of sections are clearly shown by underscoring.

The Town Law has been rearranged into a more satisfactory classification of articles; otherwise it is the present town law with such additional matter as was found in the session laws including the legislation of 1907.

The foregoing are a few observations on some of the consolidated laws. It has not been deemed necessary to discuss generally the changes made in the original general laws. All changes appear in the text and in most cases are explained in notes. The laws

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are reported by the board in the typographical form required by the rules of the legislature when the laws were drafted. The consolidated laws are each a complete compilation and technically the underscoring and bracketing was not required. The board however has seen fit to indicate by the bracketed words, matter that is to be omitted from the existing statutes. This material will not appear in the consolidated laws should they be enacted. The underscored words represent matter necessary to consolidate the statutes with the existing "General Laws" and the words underscored will appear in the consolidated laws when enacted. The underscored words however do not represent any new law. The statutes are presented in the consolidated laws without intentional change of substance. Where a new consolidated law has been compiled, no bracketing or underscoring has been employed generally, except as changes have been made incidental to consolidation.

In examining the foregoing laws it must be borne in mind that the board has not attempted to revise the statutes but that it presents them in substance as found in the session laws, making such changes only in form or language as were necessary to weld them together. This course is in accordance with the mandate of the statute creating the board which provides that the statutes shall not be changed "in substance."

The board has endeavored to incorporate into the consolidated laws the substance of every living general statute enacted since 1778 in the language of that statute, and the language of the original statutes, particularly of the revised statutes, has been changed only where its insertion in the consolidated laws made such change necessary. The notes call attention to these changes as well as such contradictions, omissions and imperfections as the board found in the statutes.

In the compilation of the consolidated laws all of the session laws and revisions of the statutes have been examined, not by reference to indexes or editorial compilations merely, but page by page from original sources, and each general statute of a substantive character enacted since the organization of the state will be found in the consolidated laws either in the text as live matter or in the schedule of repeals as dead matter.

Special attention should be directed to the schedule of repeals at the end of each consolidated law. The board has endeavored not only to make the text of the consolidated laws embrace the living general substantive statutes but has sought to make the

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schedule of repeals embrace all general substantive provisions incorporated in the text and also those not in active operation. The schedule is therefore a complete list of repeals and if the consolidated laws are enacted will wipe from the session laws all provisions of a general substantive nature not incorporated in the text. * * *

The term "Consolidated Laws" has been adopted as the name for the new compilation to distinguish it from Revised Acts, Revised Laws, Revised Statutes and General Laws.

The consolidated laws have been arranged alphabetically and numbered consecutively, and in general the plan of the board has been to dispose of every general statute ever enacted in the state, thus making the consolidation of the general statutes complete and making it unnecessary to examine any statute back of the consolidated laws for live provisions of a general nature and forming a basis for a new starting point for general legislation in the state. The extent to which the board has accomplished this purpose the examination of the consolidated laws will reveal.

CONSOLIDATED LAWS REPORTED BY THE BOARD

Table of Consolidated Laws

Chapter No.	LAW	Date of passage of original general law	Volume of report	Page of report
1	Agricultural	L. 1893, Ch. 338	1	1
2	Banking	L. 1892, Ch. 689	.....	101
3	Benevolent Orders	L. 1896, Ch. 377	.....	279
4	Business Corporations	L. 1890, Ch. 567	.....	299
5	Canal	L. 1894, Ch. 338	.....	329
6	Civil Rights	New	.....	411
7	Civil Service	L. 1899, Ch. 370	.....	443
11*	County	L. 1892, Ch. 686	.....	477
12	Debtor and Creditor	New	.....	655
13	Decedent Estate	New	.....	739
14	Domestic Relations	L. 1896, Ch. 272	.....	781
15	Drainage	New	.....	827
16	Education	New	.....	875
17	Election	L. 1896, Ch. 909	2	1373
18	Executive	L. 1892, Ch. 683	.....	1677
19	Forest, Fish and Game	L. 1900, Ch. 20	.....	1745
20	General Business †	L. 1896, Ch. 376	.....	1919

* Chapter number 8 left for Code of Civil Procedure when revised. Chapter number 9 left for Code of Criminal Procedure when revised. Chapter number 10 left for Condemnation Law when Code of Civil Procedure is revised.

† Formerly Domestic Commerce Law.

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Table of Consolidated Laws — Continued

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21	General City	L. 1900, Ch. 327	.....	2081
22	General Construction *	L. 1892, Ch. 677	.....	2121
23	General Corporation	L. 1890, Ch. 563	.....	2161
24	General Municipal	L. 1892, Ch. 685	.....	2319
25	Highway	L. 1890, Ch. 568	.....	2385
26	Indian	L. 1892, Ch. 679	.....	2583
27	Insanity	L. 1896, Ch. 545	.....	2639
28	Insurance	L. 1892, Ch. 690	3	2729
29	Joint-Stock Association	L. 1894, Ch. 235	.....	2965
30	Judiciary	New	.....	2975
31	Labor	L. 1897, Ch. 415	.....	3215
32	Legislative	L. 1892, Ch. 682	.....	3305
33	Lien	L. 1897, Ch. 418	.....	3345
34	Liquor Tax	L. 1896, Ch. 112	.....	3419
35	Membership Corporations	L. 1895, Ch. 559	.....	3515
36	Military	L. 1898, Ch. 212	.....	3637
37	Navigation	L. 1897, Ch. 592	.....	3773
38	Negotiable Instruments	L. 1897, Ch. 612	.....	3821
39	Partnership	L. 1897, Ch. 420	.....	3873
40	Penal †	L. 1881, Ch. 676	.....	.....
41	Personal Property	L. 1897, Ch. 417	4	3891
42	Poor	L. 1896, Ch. 225	.....	3929
43	Prison	New	.....	3997
44	Public Buildings	L. 1893, Ch. 227	.....	4127
45	Public Health	L. 1893, Ch. 661	.....	4153
46	Public Lands	L. 1894, Ch. 317	.....	4343
47	Public Officers	L. 1892, Ch. 681	.....	4403
48	Public Service Commissions	L. 1907, Ch. 429	.....	4437
49	Railroad	L. 1890, Ch. 565	.....	4493
50	Real Property	L. 1896, Ch. 547	.....	4773
51	Religious Corporations	L. 1895, Ch. 723	.....	4913
52	Salt Springs	L. 1892, Ch. 684	.....	5001
53	Second Class Cities §	L. 1906, Ch. 473	5	5055
54	State Boards and Commissions	New	.....	5137
55	State Charities	L. 1896, Ch. 546	.....	5169
56	State Finance	L. 1897, Ch. 413	.....	5315
57	State	L. 1892, Ch. 678	.....	5401
58	State Printing	L. 1901, Ch. 507	.....	5629
59	Stock Corporation	L. 1890, Ch. 564	.....	5657
60	Tax	L. 1896, Ch. 908	.....	5711
61	Tenement House	L. 1901, Ch. 334	.....	5913
62	Town	L. 1890, Ch. 569	.....	5983
63	Transportation Corporations	L. 1890, Ch. 566	.....	6201
64	Village	L. 1897, Ch. 414	.....	6275

* Formerly Statutory Construction Law.
† Penal Law printed in a separate volume.
§ Formerly Uniform Charter of Cities of the Second Class.

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Revision of the Statutes

Under the statute creating the board it was authorized to make such amendments as it deemed proper and necessary to condense and simplify the existing practice and as should adapt the procedure to existing conditions. This gave the board authority to revise the practice; but the labor of consolidating the substantive provisions of the statutes has been such that the board has not attempted to revise either the code of civil procedure or the code of criminal procedure.

(1) *Code of Civil Procedure*

Considerable attention however has been given by the board to the subject of the revision of the code of civil procedure and an extensive examination of the code was made by the chairman with a view to classifying and consolidating its provisions and ascertaining what portions of the code of a substantive character might be incorporated in the consolidated laws. It was found that there were a great many matters of a substantive character in the code of civil procedure that might be eliminated and appropriately assigned to the consolidated laws. It was found, however, that this elimination would disturb the unity of some of the articles in the code and that the distribution of all of the substantive matter in the code to the consolidated laws would disintegrate to a very large extent the body of the code.

In view of the difficulty of carrying on the revision of the practice with the consolidation of the substantive statutes and the very grave difficulties connected with the revision of the practice, it has been deemed best to present the consolidated laws for the approval of the legislature and leave the matter of code revision for later disposition. It seemed to the board that it was best to treat the subject of the revision of the code separately from that of the consolidation of the statutes, and as the preparation of a revised code will probably consume considerable time the consolidated laws are presented without any attempted revision of the practice in the courts.

Some matters of a substantive character however have been removed from the code of civil procedure, but they are of such a character that the board believes that there will be no doubt as to the advisability of their removal. Many of these provisions will be found in the judiciary law. A few sections have been inserted in the civil rights law. Various proceedings have been incorporated in the debtor and creditor law. There existed in

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the session laws the statute relating to the general assignment for the benefit of creditors. This statute was assigned to the proposed debtor and creditor law. It was deemed best to consolidate with this statute certain proceedings in the code of civil procedure relating to debtor and creditor. Thus there has been inserted the article relating to insolvent's discharge from debts, insolvent's exemption from arrest and imprisonment, judgment debtor's discharge from imprisonment and other matters of a similar character. The provisions of the code of civil procedure relating to the distribution of personal property have been included in an article in the decedent estate law with the provisions of the real property law relating to descent of real property. Some matters relating to executors, administrators and testamentary trustees in the revised statutes and session laws have been included under an article in this law. There are many matters of a substantive character relating to executors, administrators and testamentary trustees which might, upon a revision of the code of civil procedure, be included in the decedent estate law. Most of these are to be found in the surrogate's court practice which it has been deemed best, for the present, not to disturb but rather to leave until such time as the practice in the surrogate's court shall be revised. The general corporation law contains some proceedings from the code of civil procedure. These have been removed to the general corporation law for the purpose of making that law as complete as possible. Thus there have been included in the general corporation law from the code provisions relating to change of name, sale of corporate real property, judicial supervision of corporations and of the officers and members thereof, actions for sequestration, actions for dissolution, actions to enforce the individual liability of officers and members of corporations, actions to annul corporations, proceedings for voluntary dissolution of corporations and provisions relating to two or more of the foregoing proceedings or actions. These have been brought together in the general corporation law with such provisions of a substantive character of a similar nature as were found in the session laws, such, for instance, as the provisions relating to the powers, duties and liabilities of receivers of corporations.

These are but references to matters from the code of civil procedure incorporated into the consolidated laws, indicating that the board has not attempted the removal of all of the substantive provisions from the code and has not entered at all upon the subject of an actual revision of the practice.

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The matter eliminated from the code of civil procedure will be found in the following consolidated laws only:

Banking Law, Civil Rights Law, County Law, Debtor and Creditor Law, Decedent Estate Law, Domestic Relations Law, Executive Law, General Business Law, General Corporation Law, Joint-Stock Association Law, Judiciary Law, Lien Law, Military Law, Penal Law, Personal Property Law, Prison Law, Public Officers Law, State Finance Law.

There will be reported with the consolidated laws a "Code of Civil Procedure" with the present practice intact and without any rearrangement of the material but with such special proceedings and substantive matter eliminated as have been inserted in the consolidated laws.

(2) *Code of Criminal Procedure*

There will also be reported an act making such amendments to the code of criminal procedure as may be necessary, together with a schedule of repeals.

Historical Record of Statutes

The board has in preparation an historical record of the general statutes of the state.

While the state is making scientific researches in many directions it has sadly neglected the historical and scientific study of its laws which lie at the basis of its social fabric. An historical record should be compiled which would be a complete history of the statutes of the state. It should not be confined merely to a statement of statutes which have affected prior statutes by amendment or otherwise, but should include the ancestors and descendants of statutes as well as other facts in their lives.

Most statutes have their origin in some earlier statute and after repeal can be traced to some later act. Many statutes have parents, grow, die and leave issue. Many of our present statutes are the children of Revolutionary parents and bear a close resemblance to the family characteristics of their early ancestors.

No record has been kept heretofore of the transmission of statutory enactments from one generation of laws to another; but in its report the board preserves a record of the new statutes which it has incorporated in the consolidated laws in the hope that this will encourage in time the preparation by the state of a complete

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biography of its statutes beginning with their parentage, recounting their birth, growth and death, and terminating with their surviving issue, if any. The term "historical record" is broad enough to cover all of these facts and in time the table should be extended to include them. The board in presenting this report makes a beginning in this direction which it trusts will lead to a full statement of the life of every general statute of the state.

Such a record seems necessary in order to indicate the statutes which the board has treated as of general application. The special private and local acts have not been considered and some means must be employed to indicate whether or not the board has treated a particular statute as general or special. This information will appear in the historical record which the board is preparing. The statutes will be arranged chronologically and in the form of a table, which will show subsequent legislation in terms affecting prior statutes, arranged in two columns, separating statutes which expressly repeal from those statutes which otherwise affect earlier statutes. The table as stated will indicate the statutes or parts of statutes that the board has treated as general and will be confined to the general statutes. This record will include the revised statutes of 1829. The advantage of having such a record must be apparent. It would be much more valuable however if it were to be extended to all the statutes of the state whether general, special private or local, and it is possible that the record may be so extended. * * *

Consolidated Schedule of Repeals

There are sixty-one consolidated laws exclusive of the code of civil procedure and code of criminal procedure to each of which there is attached an extensive schedule of repeals. In order to facilitate a reference to these repealed statutes a consolidation of all of the schedules should be made. This consolidation will also serve to verify the material in the different schedules. The board has therefore undertaken the preparation of a consolidation of the schedules attached to the consolidated laws. This schedule does not duplicate the material in the historical record. That record is made up as though the consolidated laws had not been prepared and traces the statutes down to January 1, 1908. The Consolidated Schedule, however, includes not only repeals heretofore accomplished but those recommended in the consolidated laws. It also indicates the source of the new material incorporated in the consolidated laws and thus makes a beginning toward a full historical record of the statutes of the state. * * *

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III. WORK REMAINING TO BE DONE ON THE CLASSIFICATION, CONSOLIDATION AND REVISION OF THE STATUTES

The board presents to the legislature of nineteen hundred eight its consolidation of the general statutes of the state in which it has attempted to dispose of every substantive provision of general application. In order to trace the history of the statutes treated in the consolidated laws and to enable the public to learn at a glance what statutes the board has treated as of general operation an historical record of the general statutes is in preparation. As suggested the board recommends that this historical record be extended so as to include special private and local statutes as well as general statutes. The schedules of repeals are now attached to each of the sixty-one consolidated laws and the code of civil procedure and code of criminal procedure. A consolidation of these schedules is being prepared and it is recommended that this consolidated schedule be completed so that it may be determined easily what has become of the statutes in the preparation of the consolidated laws. The report of the board is about to be distributed for examination and suggestions, and the board should be continued for the purpose of correcting any errors that may be discovered and incorporating any suggestions that the board may think proper subjects for consideration. The verification of the material in the consolidated laws should continue during the coming year and the legislation of nineteen hundred eight should be incorporated so that if the consolidated laws meet with the approval of the legislature they may be adopted early in the session of nineteen hundred nine. Besides the foregoing suggestions there remains additional work on the classification and consolidation of the statutes such as the preparation of cross references, the preparation of an index to the consolidated laws, the classification of the special private and local laws and a general index of the session laws, and in addition the subject of the revision of the code of civil procedure and the code of criminal procedure.

The board however has no suggestion to make at this time for future work other than the completion of the historical record, the completion of the consolidated schedule, the incorporation of the legislation of nineteen hundred eight and the continued examination and verification of the consolidated laws for adoption at the session of nineteen hundred nine.

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The board has been aided materially in its work on the consolidated laws by its secretary, Frederick E. Wadhams of Albany, and by the following named members of the profession: Everett V. Abbott, New York; Creighton S. Andrews, Olean; James M. Angle, Rochester; Grosvenor H. Backus, New York; Leonard B. Bacon, Rochester; Albert S. Bard, New York; Fletcher W. Battershall, Albany; William W. Bennett, Catskill; Myron T. Bly, Rochester; Goodwin Brown, New York; Russell B. Burnside, Maryland; Henry W. Conklin, Rochester; William B. Crittenden, Rochester; Albert J. Danaher, Albany; Franklin M. Danaher, Albany; Edward R. Foreman, Rochester; Robert Ludlow Fowler, New York; G. Townley Fries, Rochester; Willard S. Gibbons, Cherry Valley; Frank M. Goff, Rochester; Charles R. Hall, New York; John H. Hopkins, Rochester; Eugene E. Howe, Valatie; Herbert W. Huntington, Ogdensburg; Franklin S. Hutchinson, Rochester; Ira H. Hyde, Norwich; Harry M. Ingram, Ogdensburg; W. Martin Jones, Rochester; Louis E. Lazarus, Rochester; Frederick J. Meagher, Binghamton; George E. Milliman, Rochester; Thomas P. McCarrick, Rochester; Agnes K. McNamara, Binghamton; Heman W. Morris, Rochester; Hugh J. O'Brien, Rochester; Jacob C. E. Scott, Albany; William H. Shaffer, Rochester; Albert L. Shepard, Rochester; Herbert J. Stull, Rochester; Andrew E. Tuck, Rochester; Sheldon T. Viele, Buffalo; Joseph R. Webster, Rochester; Frank White, Albany; Edgerton R. Williams, Rochester; Ralph A. Woods, Rochester.

In accordance with the statute creating the board this report and the consolidated laws will be distributed for suggestions and advice. In examining the laws it must be borne in mind that no attempt has been made to revise the statutes as the board is limited by the statute creating it to the consolidation of the statutes without change in substance. Any suggestions will be appreciated by the board, but it must be remembered that suggestions as to change in substance will serve no useful purpose as the board is without power to make them.

The board begs leave to submit herewith six volumes of the consolidated laws and offers its grateful appreciation to all those who have assisted the board in its labors.

Respectfully,

ADOLPH J. RODENBECK, *Chairman,*
WILLIAM B. HORNBLOWER,
JOHN G. MILBURN,
ADELBERT MOOT,
Board of Statutory Consolidation.

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GENERAL NOTE

The Board of Statutory Consolidation derived its existence and authority from chapter 664 of the Laws of 1904. The act provides that it shall be the duty of the board to "direct and control the revision, simplification, arrangement and consolidation of the statutes of the state;" that the plan and scope of the work shall follow that "adopted in the general laws, so far as practicable;" that the statutes shall not be changed "in substance" except that as to matters of procedure the board shall report for enactment such amendments as it may deem proper and necessary to "condense and simplify the existing practice and as shall adapt the procedure to existing conditions;" and that the board in its final report "shall suggest such contradictions, omissions and imperfections as may appear in the original text, with the manner in which they have reconciled, amended or supplied the same."

In examining the work of the board therefore it should be kept in mind that the board has not attempted to revise the statutes, but that it presents them in substance as found in the session laws, making such changes only in form or language as was necessary to weld them together. The board has endeavored to incorporate into the Consolidated Laws the substance of every living general statute enacted since 1777 in the language of that statute, and the language of the original statutes, particularly of the Revised Statutes, has been changed only where its insertion in the Consolidated Laws made such change necessary and then the notes call attention to the change and the reason for it.

The "Consolidated Laws" are reported by the board in the typographical form required by the rules of the legislature when the laws were drafted. The bracketed words as required by the rules represent matter that is to be omitted from the existing statutes and the material bracketed will not appear in the "Consolidated Laws" when enacted. Underscored words represent matter necessary to consolidate the statutes with the existing "General Laws," and the words underscored will appear in the enacted "Consolidated Laws." The underscored words therefore do not represent

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any new law, the statute being presented in the consolidated law without intentional change of substance. When it has been found necessary to compile new "Consolidated Laws" to take care of material that could not be assigned appropriately to any existing "General Law" the brackets and underscoring have been omitted generally as unnecessary under the rules of the legislature, except as changes have been made incidental to consolidation.

In compiling the Consolidated Laws all of the session laws and previous revisions of the statutes of the state have been examined, not by reference to indexes or editorial compilations merely, but page by page from original sources, and each general statute enacted since the organization of the state will be found in the Consolidated Laws either in the text as live matter or in the schedule of repeals as dead matter.

The board has also incorporated into the Consolidated Laws such matter from the Code of Civil Procedure as seemed wise, so that the Consolidated Laws might embrace as complete a statement as possible of the general substantive statutes of the state and so that at the same time the Code might be relieved of extraneous matter. The Code of Civil Procedure, with this matter eliminated, and unchanged in practice, will be presented with the Consolidated Laws.

The special private and local statutes have not been classified but they have been examined for provisions of a general nature which might be available in the Consolidated Laws.

The board has not attempted to revise the Code of Criminal Procedure, but any pertinent new matter found in the session laws has been inserted.

In examining the session laws and previous revisions an historical record of all statutes of a general nature was prepared and this record will be submitted to the legislature with the Consolidated Laws.

The term "Consolidated Laws" has been adopted as the name for the new compilation to distinguish it from "Revised Acts," "Revised Laws," "Revised Statutes" and "General Laws."

The "Consolidated Laws" have been arranged alphabetically and numbered consecutively.

In general the plan of the board has been to dispose of every general statute ever enacted in the state, thus making the consolidation of the general statutes complete, making it unnecessary

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to examine any statute back of the Consolidated Laws for live provisions of a general nature and forming a basis for a new starting point for general legislation in the state.

The board regrets that Judge Landon, who took an active part in formulating the plan for the work, did not live to join in this report.

Respectfully,

ADOLPH J. RODENBECK, *Chairman,*
WILLIAM B. HORNBLOWER,
JOHN G. MILBURN,
ADELBERT MOOT,
Board of Statutory Consolidation.

June 26, 1907.

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AN ARTICLE ON

STATUTES

AND

STATUTORY CONSTRUCTION

By Arthur F. Curtis

[39]

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FOREWORD

It is entirely appropriate that an edition of statutes should contain a practical article covering the views with which legislative enactments are regarded by the courts.

The same enactment seems of different import to different persons. One observer may see in a statute nothing but cold words whose meaning is arbitrarily fixed by the lexicographers. But when a more experienced observer examines a statute, he remembers that it must receive a construction which is in accord with the legislative intent, and to reach that end he recalls the history of the statute, the mischiefs it was intended to avoid, the rights and remedies it was designed to promote, and all the other surrounding circumstances and incidents, including the recognized canons of interpretation, which help to disclose the intent of the law makers. To the inexperienced, statute law is but a hard skeleton; to the skilful expositor, the rules for statutory interpretation are the softer and more elastic tissues with which the rigidness of the law is clothed. When necessary to make the statute conform to the legislative intent, he will restrict the application of general terms, or extend the force of the law to cases not strictly covered by a literal interpretation of its words.

To collect the general rules for the interpretation of statutes in practical form, make them easy of access, and fortify them with citation of judicial authority, is the design of the following pages. But, when the various principles are considered, it is always to be remembered that the ascertainment of legislative intent is the end desired, and that all the general rules discussed are subsidiary to that end. If one considered the canons of interpretation as arbitrary rules binding on the courts, their value is gone, for they become ossified and a part of the skeleton.

A. F. C.

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STATUTES AND STATUTORY CONSTRUCTION

I. Classification of Statutes

In General

§ 1. General or local.— Blackstone in his Commentaries classified statutes as either general or special, public or private. A general or public act is defined as a universal rule that regards the whole community, and special or private acts are stated to be rather exceptions than rules, being those which only operate upon particular persons and private concerns.[1] Blackstone fails to realize that a statute may be public without being general, and he does not recognize "local" acts in his classification. The judiciary, also, in the earlier decisions in this state seem to have been confused and to have thought that "local" was synonymous with "private," and that if a law was public it could not be "local."[2] But it is now recognized that, though a general act is always public, a local one may also be in the same category.[3] For example, an act relative to the courts in a certain city is local, but public.[4] The New York constitution refers to private and local bills and places certain limitations on their enactment.[5] Within the meaning of the constitutional provisions, a general statute is considered one that operates on the property and persons of the state generally, while a local act is one which touches but a portion of the

1. Blackstone's Com., vol. 1, pp. 85, 86.

2. See Healey v. Dudley, 5 Lans. 115, holding that an act fixing the salary of the county judge of a county was not local; People v. Davis, 61 Barb. 456, reversed 49 N. Y. 132, holding that an act creating a local inferior court was not a local act; Matter of Wakker, 1 Edm. Sel. Cas. 575, 3 Barb. 162, holding that an act relative to the jurisdiction of justices of the peace was not a local act though it operated in only one county.

3. People v. Allen, 42 N. Y. 378; People ex rel. Lee v. Board of Supervisors of Chautauqua County, 43 N. Y. 10; Kerrigan v. Force, 68 N. Y. 381; Ferguson v. Ross, 126 N. Y. 459, 27 N. E. 954; City of New York v. Deyo, 158 App. Div. 319, 143 N. Y. Supp. 334, affirmed on opinion below 213 N. Y. 706, 108 N. E. 1104; Mosher v. City of Elmira, 83 Misc. 328, 145 N. Y. Supp. 964; Burnham v. Acton, 35 How. Pr. 48, 4 Abb. Pr. N. S. 1, 7 Robt. 395. "While a general law is necessarily a public law, every public law is not necessarily a general law." City of New York v. Deyo, 158 App. Div. 319, 143 N. Y. Supp. 334, affirmed on opinion below 213 N. Y. 706, 108 N. E. 1104.

4. Huber v. People, 49 N. Y. 132.

5. Const., Art. III, §§ 16, 18, 20.

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territory of the state.[6] An act applicable to a single city,[7] though it be a metropolis of the importance of the city of New York,[8] is a local statute. Likewise, a statute which in express language pertains to but one village, town,[9] county,[10] or certain Indian lands,[11] is local, as distinguished from general. So, too, an act which affects but two,[12] three, or four[13] counties is local. But the constitutional provisions relative to private and local acts are many times evaded by framing a statute in general words, and making it applicable to all cities of a certain class.[14] Such a statute is held to be a general act within the meaning of the constitution, though there actually are but one or two cities of the class.[15] An act embracing all things of a certain class is a general and not

6. People v. O'Brien, 38 N. Y. 193; People v. Allen, 42 N. Y. 378; People ex rel. Lee v. Board of Supervisors of Chautauqua County, 43 N. Y. 10; Kerrigan v. Force, 68 N. Y. 381; People ex rel. Clauson v. Newburgh & S. Plank Road Co., 86 N. Y. 1; Matter of Church, 28 Hun 476, affirmed 92 N. Y. 1; Ferguson v. Ross, 59 Hun 207, 13 N. Y. Supp. 398, 35 N. Y. St. Rep. 647, affirmed 126 N. Y. 459, 27 N. E. 954.

7. People ex rel. McConvill v. Hills, 35 N. Y. 449; People ex rel. Hayden v. City of Rochester, 50 N. Y. 525; People ex rel. Gere v. Whitlock, 92 N. Y. 190; Tommasi v. Archibald, 114 App. Div. 838, 100 N. Y. Supp. 367; Kosters v. National Bank of Auburn, 62 Misc. 419, 116 N. Y. Supp. 647. A fortiori, an act whose operation is extended only to certain wards of a city is private. People ex rel. Purdy v. Fitch, 147 N. Y. 355, 41 N. E. 695. Clearly, a statute relative to a tract of land in a designated city is local. Johnston v. Spicer, 107 N. Y. 185, 13 N. E. 753. A statute for the consolidation of two street railways in a specified city is local. Sandham v. Nye, 9 Misc. 541, 30 N. Y. Supp. 552.

8. People v. O'Brien, 38 N. Y. 193; Gaskin v. Meek, 42 N. Y. 186; Huber v. People, 49 N. Y. 132; Matter of Allen, 205 N. Y. 158, 98 N. E. 470; City of New York v. Deyo, 158 App. Div. 319, 143 N. Y. Supp. 334, affirmed on opinion below 213 N. Y. 706, 108 N. E. 1104; Patten v. New York Elevated R. R. Co., 3 Abb. N. Cas. 306; Bartels v. Cunningham, 8 Abb. N. Cas. 226; Pullman v. City of New York, 54 Barb. 169; Gaskin v. Anderson, 55 Barb. 259; Lewenthal v. City of New York, 61 Barb. 511, 5 Lans. 532; Smith v. City of New York, 34 How Pr. 508. But it is held that a law having for its object the protection of the navigation in the harbor of New York is a general, not local, act. Ferguson v. Ross, 126 N. Y. 459, 27 N. E. 954.

9. A statute for the modification of the width of a road in a certain town is a local act. People ex rel. Failing v. Commissioners of Highways of the Town of Palatine, 53 Barb. 70. A statute to validate bonds issued by three towns in a specific county is local. Rogers v. Stephens, 86 N. Y. 623.

10. Kerrigan v. Force, 68 N. Y. 381; Williams v. Boynton, 147 N. Y. 426, 42 N. E. 184. An act relating to the expenses of judicial sales in a certain county is local, though persons living anywhere in the state would be affected thereby if they sought to foreclose a mortgage on property in such county. Kerrigan v. Force, 68 N. Y. 381.

11. A statute ratifying and confirming a revised constitution adopted by an Indian tribe, and providing for a surrogate's court in such tribe, is a local bill. Jimeson v. Lehley, 51 Misc. 352, 101 N. Y. Supp. 215.

12. People ex rel. Lee v. Supervisors of Chautauqua County, 43 N. Y. 10.

13. Coxe v. The State, 144 N. Y. 396, 39 N. E. 400.

14. People v. Squire, 107 N. Y. 593, 14 N. E. 820, affirmed 145 U. S. 175, 12 S. Ct. 880, 36 L. ed. 666.

15. A statute applying to all cities of the state of the first and second class is a general act. Kittinger v. Buffalo Traction Co., 160 N. Y. 377, 54 N. E. 1081.

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a local act, although, by reason of a limitation based on population, only a single locality can receive its benefits.[16] Thus a statute applying only to all cities or all counties of the population of five hundred thousand or over,[17] is held to be general. But the fact that an act is couched in general terms is not necessarily decisive of the question whether it is local within the meaning of the constitutional provisions. Where the act contains several limitations as to its application, the courts may reach the conclusion that it was intended to evade the constitutional inhibitions, and they may construe it as local, notwithstanding the fact that it does not mention by name the locality it is intended to affect.[18] An act which extends to the entire state except one or two cities or counties is a general, not a local statute.[19] And an amendment to such statute, extending its provisions to a district previously excluded from its operation, is likewise a general act.[20] The fact that a general act contains certain provisions applicable only to certain localities does not make the act a local one, either wholly or *pro tanto*.[21] Thus, the Public Service Commissions Law is a general act, though it contains many provisions applicable solely to the city of New York.[22] And an election law may be general, though it con-

16. Matter of Church, 92 N. Y. 1; Ferguson v. Ross, 126 N. Y. 459, 27 N. E. 954; Matter of Henneberger, 155 N. Y. 420, 50 N. E. 61, 42 L. R. A. 132; People v. Dunn, 157 N. Y. 528, 52 N. E. 572, 43 L. R. A. 247; Ahern v. Elder, 195 N. Y. 493, 88 N. E. 1059; Treanor v. Eichhorn, 74 Hun 58, 26 N. Y. Supp. 314, 26 N. Y. St. Rep. 225; People v. Squire, 14 Daly 154, affirmed 107 N. Y. 593, 14 N. E. 820, affirmed 145 U. S. 175, 12 S. Ct. 880, 36 L. ed. 666. The Rapid Transit Act, affecting only cities with a population of one million, is not a local act, though at the present time its application is limited to but one city. Admiral Realty Co. v. City of New York, 206 N. Y. 110, 99 N. E. 241, 1914A Ann. Cas. 1054.

17. People v. Squire, 107 N. Y. 593, 14 N. E. 820, affirmed 145 U. S. 175, 36 L. ed. 666, 12 S. Ct. 880; People v. Dunn, 157 N. Y. 528, 52 N. E. 572, 43 L. R. A. 247. A statute providing for special juries in counties of a population of a million or more is general though applicable to not over two counties. Coler v. Brooklyn Daily Eagle, 133 App. Div. 300, 117 N. Y. Supp. 273.

18. Matter of Henneberger, 155 N. Y. 420, 50 N. E. 61, 42 L. R. A. 132. "Whether an act, general in form, is a mere device to evade a wholesome constitutional provision is largely dependent upon the special circumstances of each case. If the act relates to persons, places and things as a class, and is neither local nor temporary, the mere fact that its practical effect is special and private does not necessarily prove that it violates constitutional provisions against special legislation." St. John v. Andrews Institute, 191 N. Y. 254, 83 N. E. 981, 14 Ann. Cas. 708.

19. People ex rel. Clauson v. Newburgh & S. Plank Road Co., 86 N. Y. 1; People ex rel. Hobach v. Sheriff of Kings County, 13 Misc. 587, 35 N. Y. Supp. 19, 69 N. Y. St. Rep. 215.

20. People ex rel. Clauson v. Newburgh & S. Plank Road Co., 86 N. Y. 1.

21. Richards v. Richards, 76 N. Y. 186; Gubner v. McClellan, 130 App. Div. 716, 115 N. Y. Supp. 755.

22. Gubner v. McClellan, 130 App. Div. 716, 115 N. Y. Supp. 755.

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tains provisions which peculiarly affect such city.[23] And the statute for the creation of a state board of pharmacy is not a local act because the state is divided into sections for the election of the members of the board.[24] An enactment is not to be deemed a private or local act because its title so indicates; its character is to be determined by its provisions, not its title.[25]

§ 2. Public or private.—As defined by Blackstone, a private act is one which operates only upon particular persons and private concerns. The same eminent authority defines a public act as a universal rule that regards the whole community, but it is clear that this definition is not strictly accurate, for a public act may be a local one which has regard to but a small section of the state.[26] An act regulating the conduct of the public business or of public officers in a locality is generally a public act, though it is local in its territorial scope.[27] Thus, a statute pertaining to the organization of an inferior court in a certain city is a public act.[28] So, too, an act providing for the creation or change of a highway is not private in its nature.[29] Statutes making amendments to the Code of Civil Procedure are generally public, as they affect all persons having matters in the courts.[30] And penal statutes are public acts, though their operation is limited to particular localities or parts of the state.[31] A statute relative to specific property which is privately owned is generally considered a private act.[32] An act authorizing a dam in certain waters,[33] regulating[34] or other-

23. Ahern v. Elder, 195 N. Y. 493, 88 N. E. 1059.

24. State Board of Pharmacy v. Bellinger, 138 App. Div. 12, 122 N. Y. Supp. 651.

25. People ex rel. Central Trust Co. v. Prendergast, 202 N. Y. 188, 95 N. E. 715; People ex rel. Bradley v. Stephens, 2 Abb. Pr. (N. S.) 348; McLain v. City of New York, 3 Daly 32.

26. See supra, § 1.

27. A city charter is a public act. Mosher v. City of Elmira, 83 Misc. 328, 145 N. Y. Supp. 964.

28. Huber v. People, 49 N. Y. 132.

29. Jenkins v. Union Turnpike Co., 1 Caines Cas. 86.

30. A statute authorizing the acceptance of surety company bonds, so far as it modifies the provisions of the Code of Civil Procedure, is neither a private nor a local act. Hurd v. Hannibal & St. J. R. Co., 6 Civ. Pro. 386.

31. Burnham v. Acton, 35 How. Pr. 48, 4 Abb. Pr. N. S. 1, 7 Robt. 395.

32. A statute releasing the interest of the state in a certain tract of land to five named persons is both local and private. Johnston v. Spicer, 107 N. Y. 185, 13 N. E. 753.

33. Coxe v. State, 144 N. Y. 396, 39 N. E. 400; Economic Power & Construction Co. v. City of Buffalo, 59 Misc. 571, 111 N. Y. Supp. 443, affirmed 128 App. Div. 883, 112 N. Y. Supp. 1127, reversed on other grounds 195 N. Y. 286, 88 N. E. 389.

34. An act in relation to the Albany penitentiary is a private or local act. Corscadden v. Haswell, 41 Misc. 59, 82 N. Y. Supp. 347, modified 88 App. Div. 158, 84 N. Y. Supp. 597. But see Fall Brook Coal Co. v. Lynch, 47 How. Pr. 520, holding that a statute permitting a certain foreign corporation to sue and be sued in the courts of this state was a public act, as it related to the general welfare of

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wise affecting a specific private corporation, is generally a private act. And this is true though the corporation is of a quasi-public character, such as a railroad or bank.[35] But if an act is framed in general words as applying to all corporations of a certain class, it is not a private act as that term is used in the constitution, though an investigation of the facts might disclose that but one or two corporations were affected thereby.[36] Thus a statute applying to all elevated railroads is not a private act, though at the time of the enactment of the statute there was but one such railroad to which it could apply.[37] And a statute which applies to all persons of a class is not private.[38] Thus a law which regulates the rights of married women, minors, adults, aliens, or some other class, is not private, but is general and public. While the fact that certain provisions of a private act are public does not make the whole act a public one,[39] it renders it such, *pro tanto*.[40]

§ 3. Permanent or temporary.— Statutes may be classified according to their duration, as permanent or temporary, a permanent act being generally designed to continue in its operation until its repeal, but a temporary act loses its effect usually after one exercise of the powers thereby granted. Whether an act is permanent or temporary depends, of course, on the legislative intent as evidenced by the statute and surrounding circumstances.[41] An act in general terms with no limitations is not as a rule to be considered a temporary act. Such an act usually contemplates that it shall be called into use as frequently as occasion demands. Thus, a statute authorizing certain public officers to "enter into contract" for the publication of legal notices has been held con-

the people at large and might affect the whole community.

35. Gaffney v. Colvill, 6 Hill 567. But see Bank of Utica v. Smedes, 3 Cow. 662, wherein it is stated by way of obiter, that a statute organizing a bank is a public act. And see Smith v. Strong, 2 Hill 241, to the same effect.

36. People v. Squire, 107 N. Y. 593, 14 N. E. 820, affirmed 145 U. S. 175, 36 L. ed. 666, 12 S. Ct. 880. An act authorizing the several railroads of this state to subscribe to the capital stock of another railroad company is a public act. White v. Syracuse, etc., R. Co., 14 Barb. 559. An act relative to labor unions is general though it affects but a fraction of the people of the state. Perkins v. Heert, 158 N. Y. 306, 53 N. E. 18, 43 L. R. A. 858.

37. Matter of New York Elevated R. Co., 70 N. Y. 327.

38. Matter of New York Elevated R. Co., 70 N. Y. 327; Matter of East River Bridge Co., 75 Hun 119, 27 N. Y. Supp. 145, 57 N. Y. St. Rep. 732.

39. New York Board of Fire Underwriters v. Whipple, 2 App. Div. 361, 37 N. Y. Supp. 712.

40. New York Board of Fire Underwriters v. Metropolitan Lloyds, 11 Misc. 646, 24 Civ. Pro. 307, 33 N. Y Supp. 547, affirmed 87 Hun 619, 33 N. Y. Supp. 1131.

41. See infra, § 52, as to legislative intent being the primary consideration.

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tinuous in its operation, and the authority of the officers to contract for such publication is not exhausted by a single exercise but may be exerted as occasion may arise.[42] Likewise, the power conferred on certain officers of designating a legal paper in New York city has been held continuous.[43] So, too, an act fixing the salaries of the firemen in the capitol was thought to be continuous.[44] On the other hand, where an act is designed to provide for a temporary exigency, the courts may deem its purpose fulfilled by one exercise of the powers thereby granted.[45] So a statute authorizing certain public officials to increase the salary of police justices has been construed to authorize but one increase, and after such increase was made the officials were held to be without power to make a further one.[46]

§ 4. Affirmative or negative.— Statutes may be classified according to their mode of expression as affirmative or negative. "Some statutes are, from their being in affirmative terms, called affirmative; others obtain the names of negative statutes, because they are penned in negative terms."[47] An affirmative act is sometimes referred to as an enabling act. A statute in the affirmative, without any negative expressed or implied, takes away no pre-existing rights or remedies; as a general rule, it operates merely to furnish an additional remedy for the enforcement of a right.[48] The affirmative statute is merely declaratory and does not repeal the common law relating to the subject; on the contrary, the two

42. Weed v. Tucker, 19 N. Y. 422.

43. Daily Register Printing Co. v. Mayor, etc., of the City of New York, 52 Hun 542, 6 N. Y. Supp. 10, 23 N. Y. St. Rep. 577.

44. Kehn v. State of New York, 93 N. Y. 291.

45. People ex rel. Brown v. Woodruff, 32 N. Y. 355.

46. Cox v. City of New York, 103 N. Y. 519, 9 N. E. 48.

47. Fairchild v. Gwynne, 14 Abb. Pr. 121, reversed 16 Abb. Pr. 23.

48. Hunt v. Johnson, 19 N. Y. 279; Candee v. Hayward, 37 N. Y. 653; Hardmann v. Bowen, 39 N. Y. 196; Fayetteville Farmers Bank v. Hale, 59 N. Y. 53; Wood v. Tunnicliff, 74 N. Y. 38; People v. New York Cent., etc., R. Co., 74 N. Y. 302; Fischer-Hansen v. Brooklyn Heights R. R. Co., 173 N. Y. 492, 66 N. E. 395; Matter of Steinway, 31 App. Div. 70, 52 N. Y. Supp. 343, affirmed 159 N. Y. 250, 53 N. E. 1103; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; Fairchild v. Gwynne, 14 Abb. Pr. 121, reversed 16 Abb. Pr. 23; Smith v. Lockwood, 13 Barb. 209; Jenkins v. Turnpike Co., 1 Caines Cas. 86; Jackson v. Bradt, 2 Caines 169; Crittenden v. Wilson, 5 Cow. 165; Stafford v. Ingersol, 3 Hill 38; Purdy v. People, 4 Hill 384; Renwick v. Morris, 7 Hill 575; Almy v. Harris, 5 Johns. 175; Colden v. Eldred, 15 Johns. 220; Wheaton v. Hibbard, 20 Johns. 290; Hale v. Angel, 20 Johns. 342; People v. Stevens, 13 Wend. 341; Wetmore v. Tracy, 14 Wend. 250; Susquehannah, etc., Turnpike Co. v. People, 15 Wend. 267. A common-law ground for the forfeiture of a franchise may be insisted upon, though it is not included in a statute. People v. Bristol, etc., Turnpike Co., 23 Wend. 222.

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rules co-exist.[49] In other words, where a remedy existed at common law for the wrong or injury against which a remedial statute is directed, if such statute provides a more enlarged or a summary or more efficient remedy for the party aggrieved, but does not in terms or by necessary implication deprive him of the remedy which existed at common law, the statutory remedy is considered as merely cumulative, and the party injured may resort to either at his election." [50] For example, a person injured by the neglect of the commissioner of highways of a town to keep the highway in repair, may maintain an action against the commissioner individually, notwithstanding the statute permitting the action to be brought against the town.[51] Likewise, the common-law right of abating or indicting a public nuisance is not deemed affected by a statute imposing a penalty, where negative words are not added indicating an intent to exclude the common-law remedy.[52] So, too, it has been held that statutes relating to the reference of disputed claims against the estates of decedents do not restrict the common-law right of arbitration.[53] And the statutory remedy in the Code of Civil Procedure for the enforcement of an attorney's lien is not exclusive, for a court of equity has always had power to ascertain and enforce liens.[54] Similarly, the statutory remedy given by section 1932 et seq. of the Code of Civil Procedure for a judgment against joint debtors, all of whom were not served, does not abrogate the common-law right of the creditor to maintain a joint action against all of the debtors, after the procurement of a judgment pursuant to such provisions.[55] But where a statute creates a new right and prescribes the remedy for a violation of that right, the party aggrieved by a violation of the right must pursue the remedy given to him by the statute and cannot resort to any other.[56] For example, the mode of settling

49. Fayetteville Farmers Bank v. Hale, 59 N. Y. 53; People ex rel. Hatzell v. Hall, 80 N. Y. 117; Matter of Steinway, 31 App. Div. 70, 52 N. Y. Supp. 343, affirmed 159 N. Y. 250, 53 N. E. 1103, 45 L. R. A. 461n; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49.

50. Tremain v. Richardson, 68 N. Y. 617; People v. New York Cent., etc., Co., 74 N. Y. 302; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245; 86 N. Y. Supp. 49; Platt v. Sherry, 7 Wend. 236; Clark v. Brown, 18 Wend. 213.

51. Campbell v. Powers, 155 App. Div. 862, 140 N. Y. Supp. 675.

52. Renwick v. Morris, 7 Hill, 575.

53. Wood v. Tunnicliff, 74 N. Y. 38.

54. Fischer-Hansen v. Brooklyn Heights R. Co., 173 N. Y. 492, 66 N. E. 395.

55. Lane v. Salter, 51 N. Y. 1.

56. Dudley v. Mayhew, 3 N. Y. 9; Jessup v. Carnegie, 80 N. Y. 441; Matter of New York, etc., R. Co., 110 N. Y. 374, 18 N. E. 120; City of Rochester v. Campbell, 123 N. Y. 405, 25 N. E. 937, 10 L. R. A. 393; Torge v. Village of Salamanca, 176 N. Y.

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disputes as to crossings, between contesting railroad corporations, having been made the subject of express provision by the statute, such mode is held to be exclusive.[57] Under the maxim *expressio unius est exclusio alterius,* the specific mention of one remedy impliedly excludes any other remedy.[58] If a statute giving a new right prescribes no remedy, the injured party may frequently resort to the means of redress given by the common law and general statutes for cognate wrongs.[59]

§ 5. Declaratory or remedial.— Blackstone says that statutes "are either declaratory of the common law, or remedial of some defects therein. Declaratory, where the old custom of the kingdom is almost fallen into disuse, or become disputable; in which case the Parliament has thought proper, *in perpetuum rei testimonium,* and for avoiding all doubts and difficulties, to declare what the common law is and ever hath been. . . . Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever."[60] Blackstone's statement is not entirely in accord with the modern view of remedial statutes. His conception seems to be that any statute which makes a change in the common law is a remedial statute; but according to the present view, there are many statutes which are in abrogation of the common law, which take away a right secured by such system, but which are not remedial.[61] And the term "remedial" is

324, 68 N. E. 626; Smith v. Boston & Albany R. R. Co., 181 N. Y. 132, 73 N. E. 679; Loewy v. Gordon, 129 App. Div. 459, 114 N. Y. Supp. 211; Woollcott v. Shubert, 169 App. Div. 194, 154 N. Y. Supp. 643; Savings Association of St. Louis v. O'Brien, 51 Hun 45, 3 N. Y. Supp. 764, 20 N. Y. St. Rep. 826; Cook v. Kelly, 12 Abb. Pr. 35, affirmed 14 Abb. Pr. 466; Bloomingdale v. Seligman, 22 Abb. N. C. 98, 3 N. Y. Supp. 243; Smith v. Lockwood, 13 Barb. 209; Stafford v. Ingersol, 3 Hill 38; Renwick v. Morris, 7 Hill 575; Almy v. Harris, 5 Johns. 175; Matter of Hollister, 2 Keyes 245; People v. Stevens, 13 Wend. 341; Wetmore v. Tracy, 14 Wend. 250; Clark v. Brown, 18 Wend. 213. A plankroad company may maintain an action for tolls against one who passed the toll gate without payment, though the statute prescribes the closing of the gate as a means of collecting toll. Physical restraint of that nature is not considered a remedy within the meaning of the rule. Jordan, etc., Plankroad Co. v. Morley, 23 N. Y. 552.

57. Matter of New York, etc., R. Co., 110 N. Y. 374, 18 N. E. 120.

58. See infra, § 130, as to the doctrine of expressio unius est exclusio alterius.

59. See infra, §§ 74, 75.

60. Black. Com., bk. 1, p. 86.

61. Chamberlain v. Western Transportation Co., 45 Barb. 218. And see

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especially applicable to acts giving a mode of remedy for a wrong where an injured person had none or an ineffective remedy under the prior system of law.[62] A statute may also be declaratory of previous statute law in the sense that it explains or dictates a construction to be given to such law.[63] A statute declaratory of the common law is to be construed as near to the rule and reason of the common law as may be.[64]

Mandatory or Directory

§ 6. In general.— Whether a duty imposed by statute upon an officer, the performance or nonperformance of which affects the rights of others, is merely directory to the officer, or is a condition essential to fix the rights of other parties as between themselves, is a very common, and also a very difficult, question to determine. Like other questions pertaining to the construction of statutes, it is to be solved by ascertaining the legislative intent.[65] The distinction which in the construction of statutes is sometimes made between directory and mandatory provisions proceeds upon the supposed intention of the legislature, and a discrimination between the essential and the immaterial and nonessential provisions of the statute, or, where the statute relates to the powers and duties of officers, between those parts which are intended as a mere direction to the officer in the exercise of his duties and those which relate to and concern his substantial authority. The exercise by the courts of a power to disregard a particular provision of a statute on the ground that it is directory merely is a delicate one and should be applied with great caution.[66] In determining whether the provision of a statute is mandatory or directory, the end sought to be attained by the provision is always important to be considered; and if the end cannot be effectuated by holding the provision to be directory, it must, if it can consistently with

infra, § 146, as to the construction of remedial statutes in derogation of the common law.

62. Freeland v. McCullough, 1 Denio 414. And see infra, §§ 153–158, as to the construction of remedial laws.

63. See infra, § 104, as to constructions declared by statute.

64. People v. Miller, 143 App. Div. 251, 128 N. Y. Supp. 549, affirmed on opinion below 202 N. Y. 618, 96 N. E. 1125.

65. People ex rel. Lefever v. Supervisors of Ulster County, 34 N. Y. 268; Wuesthoff v. Germania Life Ins. Co., 107 N. Y. 580, 14 N. E. 811; People ex rel. Frost v. Wilson, 3 Hun 437, reversed 62 N. Y. 186; Fairchild v. Gwynne, 16 Abb. Pr. 23; Taggart v. Herrick, 55 Hun 569, 9 N. Y. Supp. 758, 29 N. Y. St. Rep 424. And see infra, § 52, as to legislative intent being the primary consideration.

66. Wuesthoff v. Germania Life Ins. Co., 107 N. Y. 580, 14 N. E. 811.

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the language, be held to be mandatory.[67] One test for determining whether a statute is mandatory is whether it contains negative words which render the performance of the acts illegal or improper if compliance is not made with the act.[68] The absence of negative words tends to show that the statute is directory;[69] but their presence indicates a legislative intention that the performance of the acts in question is not to be omitted, which intention cannot be infringed by the courts.[70] The negative need not be expressed; it may be inferred.[71] When the legislature prescribes a new rule and requires an act to be done in a certain way, it may be inferred that the legislature intended that it should be done in no other way; and where such intention is inferred, the courts will hold the statute mandatory.[72] Where a statute is designed to remedy an evil, as a general proposition, full effect cannot be given to it unless it is held to be mandatory; and the courts will construe it accordingly.[73] And if a statute imposes a penalty for its violation, it is reasonable to assume that the legislature intended its provisions to be followed, and hence they are construed as mandatory.[74] Where the requirement pertains to the essence and substance of the act to be performed, it cannot be disregarded as directory.[75] The fact that the statute is framed in mandatory words, such as "shall" or "must," is of slight, if any, importance in determining whether the act is mandatory or directory.[76] The question whether it is mandatory or

67. Matter of Cuddeback, 3 App. Div. 103, 39 N. Y. Supp. 388.

68. Thomson v. Harris, 88 Hun 478, 34 N. Y. Supp. 885, 69 N. Y. St. Rep. 80.

69. Matter of Broadway Widening, 63 Barb. 572; Gale v. Mead, 2 Denio 160; Jones v. City of Utica, 16 Hun 441; Duntley v. Davis, 42 Hun 229, 5 N. Y. St. Rep. 80; Taggart v. Herrick, 55 Hun 569, 9 N. Y. Supp. 758, 29 N. Y. St. Rep. 424.

70. Matter of Douglass, 46 N. Y. 42; People ex rel. Wells v. Collin, 19 App. Div. 457, 46 N. Y. Supp. 701, affirmed 154 N. Y. 750, 49 N. E. 1102.

71. Hardmann v. Bowen, 39 N. Y. 196.

72. Hardmann v. Bowen, 39 N. Y. 196; City of Rochester v. Bloss, 77 App. Div. 28, 79 N. Y. Supp. 236, affirmed 173 N. Y. 646, 66 N. E. 1105; Hardman v. Bowen, 5 Abb. Pr. (N. S.) 332. "It is a maxim of the law, that if an affirmative statute, which is introductive of a new law, direct a thing to be done in a certain manner, that thing shall not, even although there are no negative words, be done in any other manner." Hardmann v. Bowen, 39 N. Y. 196.

73. Fairchild v. Gwynne, 16 Abb. Pr. 23; Caswell v. Allen, 7 Johns. 63. "In determining whether the provision of a statute is mandatory or directory, the end sought to be attained by the provision is always important to be considered, and if the end cannot be effectuated by holding the provision to be directory, it must, if it can consistently with the language, be held to be mandatory." Matter of Cuddeback, 3 App. Div. 103, 39 N. Y. Supp. 388.

74. Bradley v. Buffalo etc., R. R. Co., 34 N. Y. 427; Caswell v. Allen, 7 Johns. 63.

75. People ex rel. Barnes v. Gardner, 24 N. Y. 583.

76. Stone v. Pratt, 90 Hun 39, 35 N. Y. Supp. 519, 70 N. Y. St. Rep. 131.

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directory rarely arises except in the case of statutes using peremptory language; when an act uses discretionary language, such as "may," the problem before the court is whether the enactment is peremptory or permissive.[77]

§ 7. Time not of essence.— It is frequently the case that a statute directs a public officer to do an act at a certain time, though it is not of the essence of the act that it be done at that particular time. The direction is given for the purpose of securing system, uniformity, and dispatch in the conduct of the public business, rather than for the purpose of making the rights of persons dependent on the doing of the act at the specified time. In such cases, the direction as to time is generally considered merely directory, and the rights of other persons are not injuriously affected by the failure of the officer to perform the duty at the time prescribed.[78] Especially is this so when the acts are to be done for the benefit of the public,[79] or where there are no negative words in the statute forbidding the acts to be done at any other time.[80] For example, a statute requiring a judge before whom a case is tried without a jury to file his decision within twenty days after the trial is simply directory, and its non-observance furnishes no ground for setting aside the decision.[81] And the failure of a justice of the peace to file his return in case of an appeal within the prescribed time does not cause the appellant to lose his appeal; the return may be subsequently filed, and the party

77. As to whether a statute is peremptory or permissive, see infra, §§ 12–16.

78. Looney v. Hughes, 26 N. Y. 514; People ex rel. Lefever v. Supervisors of Ulster County, 34 N. Y. 268; Matter of New York Prot. E. Pub. School, 47 N. Y. 556; People v. Cook, 14 Barb. 259, affirmed 8 N. Y. 67; Stimpson v. Huggins, 16 Barb. 658; Matter of Broadway Widening, 63 Barb. 572; Matter of Heath, 3 Hill 42; People ex rel. Frost v. Wilson, 3 Hun 437; Witheril v. Mosher, 9 Hun 412; Metcalf v. City of New York, 49 Hun 607, 1 N. Y. Supp. 873, 17 N. Y. St. Rep. 97, 28 Week. Dig. 571; Thomson v. Harris, 88 Hun 478, 34 N. Y. Supp. 885, 69 N. Y. St. Rep. 80; People v. Allen, 6 Wend. 486. "The general rule most certainly is, that where a statute directs a public officer to do a thing within a certain time, without any negative words restraining him from doing it afterwards, the naming of the time will be regarded as merely directory, and not as a limitation upon his authority." Barnes v. Badger, 41 Barb. 98.

79. Metcalf v. Mayor, etc., of New York, 49 Hun 607, 1 N. Y. Supp. 873, 17 N. Y. St. Rep. 97, 28 Week. Dig. 571; Looney v. Hughes, 30 Barb. 605, affirmed 26 N. Y. 514; Matter of Heath, 3 Hill 42.

80. Matter of New York Prot. E. Pub. School, 47 N. Y. 566; Barnes v. Badger, 41 Barb. 98; Matter of Broadway Widening, 63 Barb. 572; Gale v. Mead, 2 Denio 160; Duntley v. Davis, 42 Hun 229.

81. Stewart v. Slater, 6 Duer 83; People ex rel. Cahoon v. Dodge 6 How. Pr. 47. And see Matter of Hennessy, 164 N. Y. 393, 58 N. E. 446, holding that a provision requiring a final order in certain election matters to be made by a certain time is directory and that an order subsequently made is effective.

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may then proceed with the appeal.[82] So, too, in the absence of statute prescribing another result of his failure, the neglect of public officer to file his official bond within the required time does not affect his office.[83] And a requirement that the session laws shall be published in newspapers within four months after the adjournment of the legislature is not mandatory.[84]

§ 8. Mode of performance of act not material.— Where the manner or mode in which a public officer shall perform a certain duty is not material, a direction in a statute to do the act in a certain way may be considered as intended merely for the expedition of system, uniformity and dispatch in the public business, and hence the courts may hold that the statute is directory as to the manner or mode of performance.[85] Thus, a statute requiring the sale of land under execution, where the land consists of known lots or parcels, to be made separately and not in gross, is directory; and though the sale is irregular, it is not void.[86] But when the legislature prescribes a certain way in which an act shall be done, it may appear to the court that it was the intention of the legislature to prohibit the performance in any other manner; and if such is the case the statute will be considered mandatory.[87] Hence a statute requiring an assignment for the benefit of creditors to be acknowledged is mandatory, as it implies that one shall not be made without an acknowledgment.[88] Likewise the requirement that such an assignment shall be accompanied by a schedule is essential to the validity of the assignment.[89]

82. Matter of Kellogg, 3 Cow. 372.

83. Pryor v. City of Rochester, 57 App. Div. 486, 68 N. Y. Supp. 86; People v. Holley, 12 Wend. 481; Hall v. Luther, 13 Wend. 491. The provision of a statute that a tax collector "shall execute a bond" before receiving first warrant for the collection of money is as to the time fixed for the giving of the bond directory merely, so far as the validity of the bond is concerned, as the statute does not negative its validity if filed after the warrant is delivered. The giving of the bond is mandatory; the time when, is directory. Duntley v. Davis, 42 Hun 229.

84. McRoberts v. Winant, 15 Abb. Pr. (N. S.) 210; Metcalf v. City of New York, 49 Hun 607, 1 N. Y. Supp. 873, 17 N. Y. St. Rep. 97, 28 Week. Dig. 571.

85. Cunningham v. Cassidy, 17 N. Y. 276; People v. Supervisors of Ulster County, 34 N. Y. 268; Matter of Hennessey, 164 N. Y. 393, 58 N. E. 446; People v. Cook, 14 Barb. 259, affirmed 8 N. Y. 67; People ex rel. Frost v. Wilson, 3 Hun 437, reversed 62 N. Y. 186; Thomson v. Harris, 88 Hun 478, 34 N. Y. Supp. 885; Rawson v. Van Riper, 1 Thomp. & C. 370.

86. Cunningham v. Cassidy, 17 N. Y. 276.

87. Hardmann v. Bowen, 39 N. Y. 196.

88. Hardmann v. Bowen, 39 N. Y. 196; Fairchild v. Gwynne, 16 Abb. Pr. 23. But the provision of the act which requires the assignor to state his residence and the kind and location of his business, has been held to be directory. Dutchess Co. Mut. Ins. Co. v. Van Wagonen, 132 N. Y. 398, 30 N. E. 971; Taggart v. Herrick, 55 Hun 569, 9 N. Y. Supp. 758.

89. Juliand v. Rathbone, 39 N. Y. 369. But the failure to perform acts

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§ 9. **Procedure.**— Many matters of practice, though prescribed by statute, are not of essence, and a failure to comply with them will not vitiate the proceeding. For example, a requirement that a warrant of attachment shall state the ground therefor is not so far mandatory but that the court may correct an error in the statement.[90] And a statute relative to balloting for jurors may be held merely directory; and though it be violated, their verdict will not be set aside on that ground.[91] Provisions requiring the prompt mailing of depositions taken under a commission are merely directory, and objection cannot be made on the trial to their introduction in evidence on the ground that there was an unreasonable delay.[92] So, too, provisions of the Code regulating the mode of entering the judgment and the making up and filing of the judgment roll are regarded as directory, not imperative.[93] Similarly, a statute requiring that an execution against a married woman shall direct the levy and collection of the amount from her separate property has been held not mandatory.[94] And a statute requiring a sheriff to make and file duplicate certificates of sale is directory in so far as it affects the rights of purchasers at the sale, though it is mandatory as to the sheriff.[95] Likewise, a statute requiring the clerk of a school district to give notice of the annual meeting of the inhabitants thereof may be considered as directory, where the clerk has acted in good faith and the time and place of the meeting were fixed at the preceding annual meeting.[96] But where the proceeding seeks to divest one of title to his property, a strict compliance with all the statutory requirements beneficial to the owner must be followed or the proceeding will not be effective.[97] When a power to affect property is conferred upon those who have no personal interest in it, such power can be exercised only in the manner and under the circumstances specified in the instrument creating it.[98] And a statute which

required to be done after the delivery of the assignment, such as the recording of the assignment, does not render it void. Warner v. Jaffray, 96 N. Y. 248.

90. Stone v. Pratt, 90 Hun 39, 25 Civ. Pro. 176, 35 N. Y. Supp. 519.

91. Cole v. Perry, 6 Cow. 584.

92. Halleran v. Field, 23 Wend. 38.

93. Stimson v. Huggins, 16 Barb. 658. The statute relative to the docketing of judgments by transcript is directory, and as against persons who have not been misled or prejudiced thereby, an error therein may be corrected by the court rendering the judgment. Sears v. Burnham, 17 N. Y. 445.

94. Thompson v. Sargent, 15 Abb. Pr. 452.

95. Jackson v. Young, 5 Cow. 269; O'Brien v. Hashagen, 20 Hun 564.

96. Merchant v. Langworthy, 6 Hill 646, affirmed 3 Denio 526.

97. Cunningham v. Cassidy, 17 N Y. 276.

98. People v. Schermerhorn, 19 Barb. 540.

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provides for the making of an indenture which is obligatory on an infant is considered as establishing a system by which infants can lawfully bind themselves in a case where they could not do so at common law, and such a statute is not merely directory, but is peremptory and absolute in its requirements.[99]

§ 10. Elections.— The detail by which the procedure is prescribed for the holding of elections and the determination of the results affords many instances of statutes which are directory. Though many of the provisions of the statute are not followed precisely, the result of the election is not thereby affected, the statutes being considered merely directory to that extent.[1] Thus, the statutory requirements for the taking of oaths by the inspectors of election,[2] the formal organization of the board,[3] or the sealing of the election boxes[4] do not invalidate the certificate of the inspectors as to the result of the vote. On the other hand, the performance of certain matters is absolutely mandatory. For example, the requirement that ballots shall be marked in a certain way and any other method be declared unlawful is mandatory, and a ballot not correctly marked cannot be counted.[5] Likewise, a requirement that certificates of nominations for certain officers shall be filed within a certain period before the election is mandatory.[6] And, similarly, where the statute makes it a condition prerequisite to an election that a petition signed by a certain proportion of the electors shall be filed, the requirement is mandatory and cannot be neglected.[7]

§ 11. Taxation.— The procedure for the assessment and collection of taxes is a method by which one may be divested of his title to his property, and hence strict compliance must be made with all provisions beneficial to the owner.[8] Thus, a statutory requirement that the comptroller shall publish notices stating the expiration of the time for the redemption of lands sold for taxes,

99. People ex rel. Barbour v. Gates, 57 Barb. 291

1. People v. Cook, 8 N. Y. 67.

2. People v. Cook, 8 N. Y. 67. In the holding of corporate elections, the statute requiring the inspectors to take an oath is simply directory and does not nullify the election. Matter of Mohawk, etc., R. Co., 19 Wend. 135.

3. People ex rel. Frost v. Wilson, 62 N. Y. 186.

4. People ex rel. Dailey v. Livingston, 79 N. Y. 279.

5. People ex rel. Wells v. Collin, 19 App. Div. 457, 46 N. Y. Supp. 701, affirmed 154 N. Y. 750, 49 N. E. 1102.

6. Matter of Cuddeback, 3 App. Div. 103, 39 N. Y. Supp. 388.

7. People ex rel. Hovey v. Town Clerk of Town of Bainbridge, 26 Misc. 220, 56 N. Y. Supp. 64.

8. As to the construction of acts taking private property without the

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is peremptory.[9] Similarly, a provision of a city charter prohibiting the passage by the common council of certain resolutions relative to assessments for public improvements until two days after the publication thereof, is mandatory; and if the publication is not made, an assessment may be invalid.[10] And any provision which is essential to give the taxing officers jurisdiction to make the assessment of the tax cannot be regarded as directory; on the contrary, the requirement must be obeyed or the tax will not be collectable. Hence, a requirement that notice shall be given by the assessors of the completion of the assessment roll and an opportunity afforded to the taxpayers of having errors in the roll corrected, is essential to the validity of the tax.[11] But matters which pertain, not to the essence of the levy tax, but to the particular time or mode in which the assessment shall be made, are sometimes held to be merely directory. Thus, a statute requiring the tax to be assessed and the tax warrant delivered to the collector within a certain time is not mandatory, and a delay until after such time does not invalidate the warrant.[12] Likewise, a requirement that the estimate and assessment for a public improvement in a city should be made by the commissioners before the execution of the work is not mandatory as to time; and, if made after the work, the title of a purchaser under a sale for the nonpayment of the assessment will not be prejudiced.[13] And the requirements of a city charter prescribing the length of notice of hearing before the assessors in the case of local improvements and of the notice by the city treasurer of the receipt of the assessment roll, are merely directory.[14] But a requirement that an official seal shall be affixed to the warrant is mandatory and cannot be neglected.[15]

consent of the owner, see infra, § 149. See also the TAX LAW in this work.

9. Westbrook v. Willey, 47 N. Y. 457.

10. Matter of Douglass, 46 N. Y. 42, reversing 58 Barb. 174. See also Folsom's Petition, 2 Thomp. & C. 55, affirmed 56 N. Y. 60.

11. Wheeler v. Mills, 40 Barb. 644.

12. Bradley v. Ward, 58 N. Y. 401; Witheril v. Mosher, 9 Hun 412. A statute requiring a school trustee to make an assessment within thirty days after the voting of the tax is merely directory and the assessment may be made after the expiration of such thirty days. Thomas v. Clapp, 20 Barb. 165; Gale v. Mead, 2 Denio 160; Rawson v. Van Riper, 1 Thomp. & C. 370.

13. Doughty v. Hope, 3 Denio 249, affirmed 3 Denio 594, 1 N. Y. 79.

14. People ex rel. Locke v. City of Rochester, 5 Lans. 11.

15. City of Rochester v. Bloss, 77 App. Div. 28, 79 N. Y. Supp. 236, affirmed 173 N. Y. 646, 66 N. E. 1105. "When the statute provides that a seal shall be used, we have no power to adjudge that a signature, without a seal, is sufficient. Lockwood v. Gehlert, 127 N. Y. 241, 27 N. E. 812.

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Peremptory or Permissive

§ 12. In general.— Statutes may be classified as peremptory or permissive. The former are such as require the performance of an act, while the latter authorize but do not require it to be done. The latter afford a discretion, but the former are mandatory. Owing to the fact that statutes are frequently classified as mandatory in opposition to permissive, and also as mandatory in opposition to directory, some confusion has arisen in respect to what otherwise would be a comparatively clear matter. The question whether a statute is mandatory or directory arises only with respect to those statutes which are peremptory in language; if the statute affords a discretion whether a certain act shall be done, it is not necessary to delve deeper and to determine whether the requirement is so immaterial that it is safe to neglect its performance. Ordinarily the legislature uses appropriate language to express its intention, and thus, when a statute is peremptory in language, it is construed accordingly;[16] and when its language is permissive, it is construed as allowing a discretion.[17] That is to say, "may" is construed to mean "may,"[18] and "shall" is construed as "shall."[19] As a general rule, if there is nothing in the act or surrounding circumstances to indicate a contrary intent on the part of the legislature, words of command are construed as peremptory,[20] and words of discretion are treated as permissive.[21]

§ 13. Discretionary words, when peremptory.—As is stated above,[22] the normal construction placed on a discretionary term, such as, for example, "may," is permissive. But the courts may

16. Oakes v. Riter, 118 App. Div. 772, 103 N. Y. Supp. 849; Stern v. Marcuse, 119 App. Div. 478, 103 N. Y. Supp. 1026.

17. Medbury v. Swan, 46 N. Y. 200; Matter of Goddard, 94 N. Y. 544; Morse v. Press Pub. Co., 71 App. Div. 351, 75 N. Y. Supp. 976; Cooke v. State Nat. Bank of Boston, 50 Barb. 339, 3 Abb. Pr. N. S. 339; Skinner v. Tibbitts, 13 Civ. Pro. 370.

18. Williams v. People, 24 N. Y. 405; Medbury v. Swan, 46 N. Y. 200; Matter of Goddard, 94 N. Y. 544; Morse v. Press Pub. Co., 71 App. Div. 351, 75 N. Y. Supp. 976; Skinner v. Tibbitts, 13 Civ. Pro. 370; People v. Cohocton Stone Road, 25 Hun 13; People ex rel. Comstock v. City of Syracuse, 59 Hun 258, 12 N. Y. Supp. 890, affirmed 128 N. Y. 632, 29 N. E. 146.

19. Rosenblum v. Gorman, 21 App. Div. 618, 47 N. Y. Supp. 754.

20. Oakes v. Riter, 118 App. Div. 772, 103 N. Y. Supp. 849; Stern v. Marcuse, 119 App. Div. 478, 103 N. Y. Supp. 1026.

21. Williams v. People, 24 N. Y. 405; Medbury v. Swan, 46 N. Y. 200; People v. Cohocton Stone Road, 25 Hun 13; People ex rel. Comstock v. City of Syracuse, 59 Hun 258, 12 N. Y. Supp. 890, affirmed 128 N. Y. 632, 29 N. E. 146; Morse v. Press Pub. Co., 71 App. Div. 351, 75 N. Y. Supp. 976; Cooke v. State Nat. Bank of Boston, 50 Barb. 339, 3 Abb. Pr. N. S. 339; Goff v. Vedder, 12 Civ. Pro 358.

22. See supra, § 12.

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disregard the literal meaning of words in a statute when necessary to carry into effect the legislative intent;[23] and hence "may" or some other term indicating discretion may be interpreted as peremptory.[24] It is a familiar rule, that where a statute clothes a public officer or body with power to do an act which concerns the public interests or the rights of individuals, though the language of the statute is merely permissive, it will be construed as imperative, and the execution of the power may be insisted upon as a duty.[25] Or, if a statute directs the doing of an act for the sake of justice, permissive words may be given a peremptory force.[26] In such cases "may" is construed as "must" or "shall."[27] Thus, the language of an act which authorizes municipal authorities to repair or maintain highways or bridges is construed as imperative, though the language is permissive in the

23. As to a departure from a literal construction, see infra, § 62.

24. People ex rel. Wehle v. Conner, 8 Hun 533.

25. Hutson v. City of New York, 9 N. Y. 163; People ex rel. Otsego County Bank v. Board of Supervisors of Otsego County, 51 N. Y. 401; Phelps v. Hawley, 52 N. Y. 23; People ex rel. Reynolds v. Common Council of Buffalo, 140 N. Y. 300, 35 N. E. 485; People ex rel. Cayuga Nation of Indians v. Com'rs of Land Office, 207 N. Y. 42, 100 N. E. 735; Matter of Tobin, 53 App. Div. 453, 66 N. Y. Supp. 97, affirmed 164 N. Y. 532, 58 N. E. 650; Litchfield v. Bond, 105 App. Div. 229, 93 N. Y. Supp. 1016, reversed 186 N. Y. 66, 78 N. E. 719; People ex rel. Reynolds v. Common Council of City of Buffalo, 2 Misc. 7, 49 N. Y. St. Rep. 576, 21 N. Y. Supp. 601, affirmed 140 N. Y. 300, 35 N. E. 485; People ex rel. Com'rs of Records v. Supervisors of New York, 11 Abb. Pr. 114, affirmed 3 Abb. App. Dec. 566; Cooke v. State Nat. Bank of Boston, 50 Barb. 339, 3 Abb. Pr. N. S. 339; Hines v. City of Lockport, 60 Barb. 378, 41 How. Pr. 435, affirmed 50 N. Y. 236; Goff v. Vedder, 12 Civ. Pro. 358; Malcom v. Rogers, 5 Cow. 188; Hogan v. Devlin, 2 Daly 184; Wilson v. Mayor, etc., of New York, 1 Denio 595; City of New York v. Furze, 3 Hill 612; Buffalo & Batavia Plank Road Co. v. Com'rs of Town of Lancaster, 10 How. Pr. 237; Adriance v. Supervisors of City and County of New York, 12 How. Pr. 224; People ex rel. Burroughs v. Brinkerhoff, 7 Hun 668, modified 68 N. Y. 259; People v. Cohocton Stone Road, 25 Hun 17; Matter of 34th St. R. Co., 37 Hun 442, reversed 102 N. Y. 343, 7 N. E. 172; People ex rel. Overton v. Village of Whitestone, 71 Hun 188, 24 N. Y. Supp. 532; People ex rel. Dinsmore v. Gilroy, 82 Hun 500, 31 N. Y. Supp. 776, affirmed 145 N. Y. 596, 40 N. E. 164; Newburgh Turnpike Road Co. v. Miller, 5 Johns. Ch. 101, 9 Am. Dec. 274; Lucas v. Ensign, 4 N. Y. Leg. Obs. 142; People ex rel. Saunders v. Supervisors of Erie County, Sheld. 517.

26. People ex rel. Otsego County Bank v. Board of Supervisors of Otsego County, 51 N. Y. 401; People ex rel. Conway v. Board of Supervisors of Livingston County, 68 N. Y. 114; Nelligan v. Groth, 126 App. Div. 444, 110 N. Y. Supp. 619; Matter of 34th St. R. Co., 37 Hun 442, reversed 102 N. Y. 343, 7 N. E. 172; Goff v. Vedder, 12 Civ. Pro. 358.

27. Phelps v. Hawley, 52 N. Y. 23; People ex rel. Conway v. Board of Supervisors of Livingston County, 68 N. Y. 114; Matter of Tobin, 53 App. Div. 453, 66 N. Y. Supp. 97, affirmed 164 N. Y. 532, 58 N. E. 650; People ex rel. Reynolds v. Common Council of City of Buffalo, 2 Misc. 7, 49 N. Y. St. Rep. 576, 21 N. Y. Supp. 601, affirmed 140 N. Y. 300, 35 N. E. 485; People ex rel. Fiske v. The Common Council of the City of Brooklyn, 22 Barb. 404; Goff v. Vedder, 12 Civ. Pro. 358; Adriance v. Supervisors City and County of New York, 12 How. Pr. 224; People ex rel. Saunders v. Erie County, Sheld. 517.

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ordinary import of the words used.[28] And a statute authorizing city officials to construct and maintain sewers is construed as mandatory, though its language is permissive in form.[29] So, too, an enactment authorizing the board of supervisors to hear certain claims for illegal taxation and to provide relief in such cases, is imperative to the extent that the board must hear the claims; and if it be determined that the tax was illegally levied, a mandatory duty is imposed on the board to furnish appropriate relief.[30] In the same way, a statute authorizing the board of supervisors of a county to raise a certain sum of money for the benefit of specified private parties is in effect a legislative mandamus.[31] Likewise, a statute empowering the commissioners of the land office to adjust a certain claim, in spite of its permissive language, was thought to contain a legislative command to settle the claim at a just sum, and it was held that the board could be compelled by mandamus to perform that duty.[32] And an act which empowers the remaining trustees of a village, in the case of a vacancy in the board, to call a special election, has been held to be mandatory.[33] A statute which provides that a deputy county clerk "may" perform certain duties of the office of the county clerk, is construed as mandatory.[34] And, similarly, a statute authorizing the recording of births, though permissive in form, is imperative in obligation.[35] In matters of procedure, where the legislative intent requires such construction, permissive words may be construed as mandatory.[36] Thus provisions that

28. Hutson v. City of New York, 9 N. Y. 163; People v. Clarke, 9 N. Y. 349; Hines v. City of Lockport, 60 Barb. 378, 41 How. Pr. 435, affirmed 50 N. Y. 236; Phelps v. Hawley, 3 Lans. 160, affirmed 52 N. Y. 23.

29. City of New York v. Furze, 3 Hill 612.

30. People ex rel. The Otsego County Bank v. Supervisors of Otsego County, 51 N. Y. 401; People ex rel. Pells v. Supervisors of Ulster County, 65 N. Y. 300; People ex rel. The First National Bank of West Winfield v. Herkimer County Supervisors, 56 Barb. 452; Adriance v. Supervisors of the City and County of New York, 12 How. Pr. 224.

31. People ex rel. Conway v. Board of Supervisors of Livingston County, 68 N. Y. 114; People ex rel. Com'rs of Records v. Supervisors of New York, 11 Abb. Pr. 114, affirmed 3 Abb. App. Dec. 566. Where an act of the legislature authorized the board of supervisors of a certain county to pay to an attorney, who had been assigned by the court to defend one accused of murder, the disbursements actually incurred in such defense, it was held that the statute was to be construed as mandatory. People ex rel. Saunders v. Supervisors of Erie County, Sheld. 517.

32. People ex rel. Cayuga Nation of Indians v. Com'rs of Land Office, 207 N. Y. 42, 100 N. E. 735.

33. People ex rel. Overton v. Village of Whitestone, 71 Hun 188, 24 N. Y. Supp. 532.

34. Lucas v. Ensign, 4 N. Y. Leg. Obs. 142.

35. Matter of Lauterjung, 48 N. Y. Super. Ct. 308.

36. In Gibbs v. Queen Ins. Co., 63 N. Y. 114, a statute providing that suits against a foreign corporation "may" be commenced by attachment, was construed as peremptory

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costs "may" be awarded against certain defeated litigants are sometimes construed as peremptory, not discretionary.[37] And in statutes conferring criminal jurisdiction which are strictly construed for the benefit of an accused, "may" will be construed as "must" if such construction is to his advantage.[38]

§ 14. Discretionary words, when permissive.— Ordinarily, discretionary words are to be given their natural meaning as words conveying a permissive but not imperative power.[39] Though normally discretionary language is given its natural permissive meaning,[40] as stated in the preceding paragraph, statutes clothing a public officer or body with power to do an act which promotes justice or which concerns the public interests or the rights of individuals, though their language is merely permissive, are construed as imperative. This rule, however, like other rules for the interpretation of statutes, is not inflexible. The act is held peremptory because such is supposed to have been the legislative intention.[41] If the statute construed as a whole and taken in connection with the surrounding circumstances indicates that the legislature intended it to be discretionary, not imperative, the courts will give effect to such intention.[42] And to the general rule referred to there is a well defined limitation, to the effect that when the rule is invoked in aid of a personal right, the right

And in Hagadorn v. Raux, 72 N. Y. 583, it was held that a statute authorizing a suit to be brought in the name of a town against a previous supervisor for the conversion of town moneys, is peremptory. In People v. Brooks, 1 Denio 457, a provision of the Revised Statutes to the effect that certain affidavits "may" be taken before certain commissioners, was interpreted as making it the imperative duty of the commissioners to take the affidavits.

37. Nelligan v. Groth, 126 App. Div. 444, 110 N. Y. Supp. 619; Carter v. Barnum, 24 Misc. 220, 53 N. Y. Supp. 539.

38. People v. Divine, 11 Abb. Pr. 90, 21 How. Pr. 80, 5 Park. Crim. 62.

39. See supra, § 12.

40. Medbury v. Swan, 46 N. Y. 200; Goff v. Vedder, 12 Civ. Pro. 358; Malcom v. Rogers, 5 Cow. 188; Buffalo & Batavia Plank Road Co. v. Com'rs of Highways of the Town of Lancaster, 10 How. Pr. 237; Newburgh & Cochecton Turnpike Road v. Miller, 5 Johns Ch. 101 "If the rights and interests of the public are not concerned, or private persons have no lawful claim and interest in the exercise of the power, the word 'may' by which the power is conferred should receive its ordinary meaning, and it should be construed as conferring a discretionary power upon the officer or public body." Buffalo & Batavia Plank Road Co. v. Com'rs of Highways of the Town of Lancaster, 10 How. Pr. 237.

41. People ex rel. The Dunkirk, Warren & Pittsburgh R. Co. v. Batchellor, 53 N. Y. 128; Gilmore v. City of Utica, 121 N. Y. 561, 24 N. E. 1009; People ex rel. Comstock v. City of Syracuse, 59 Hun 258, 12 N. Y. Supp. 890, affirmed 128 N. Y. 632, 29 N. E. 146.

42. People ex rel. The Dunkirk, Warren & Pittsburgh R. Co. v. Batchellor, 53 N. Y. 128; Talmage v. Third National Bank of New York, 91 N. Y. 531; Gilmore v. City of Utica, 121 N. Y. 561, 24 N. E. 1009; McConnell v. Allen, 193 N. Y. 318,

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must be an existing legal one, and not one which the board or officer is by the statute authorized to create.[43] Thus, a statute authorizing the common council of a city to require street railway companies to repave between their tracks and at least two feet in width on each side, "whenever the common council shall deem such repavement necessary," is not peremptory, but the exercise of the authority is discretionary.[44] Where the statute is not one which provides for the doing of certain acts by a public officer or body, but is one declaring that an individual or private corporation shall or may do certain acts or have a certain remedy, which is intended for his own benefit, he has a discretion whether he shall do the act or pursue the remedy: the act is not mandatory.[45] In matters of practice, when the court is called upon to make some order or do some other act, a statute discretionary in language is not generally given a peremptory meaning.[46] Even those statutes which are peremptory in language are frequently so construed as to afford a discretion in a judicial duty.[47] A statute authorizing the punishment of one who has failed to pay certain costs, as a contempt, is not construed as mandatory and requiring the infliction of the punishment.[48] Similarly, a statute which authorizes larceny of a certain description to be punished as grand larceny though the property is worth less than $25, is not peremptory, but allows a discretion in the punishment.[49] And a statute relative to setting up new matter by way of supplemental complaint, where the term "may" is used, is construed as discretionary.[50] So, too, a statute providing that a mechanic's lien may be vacated and canceled by an order of a court of record, is in no sense mandatory, but is a permissive statute, clothing the court with discretionary power.[51] And the federal statute which authorizes actions against

85 N. E. 1082; People ex rel. Comstock v. City of Syracuse, 59 Hun 258, 12 N. Y. Supp. 890, affirmed 128 N. Y. 632, 29 N. E. 146. If the act contains the phrase "in its discretion," the word "may" cannot be construed as "must." Such phrase indicates that the statute is not to be construed as peremptory. Darby v. Condit, 1 Duer 599, 11 N. Y. Leg. Obs. 154.

43. People ex rel. Dinsmore v. Gilroy, 82 Hun 500, 31 N. Y. Supp. 776, affirmed 145 N. Y. 596, 40 N. E. 164.

44. Gilmore v. City of Utica, 121 N. Y. 561, 24 N. E. 1009.

45. Malcom v. Rogers, 5 Cow. 188; Verplanck v. Mercantile Ins. Co. of New York and Barker, 1 Edw. 84.

46. New York, etc., R. Co. v. Coburn, 6 How. Pr. 223.

47. See infra, § 16.

48. People v. Masonic Guild Mut. Ben. Assoc., 22 Civ. Pro. 74, 18 N. Y. Supp. 806.

49. Williams v. People, 24 N. Y. 405.

50. Medbury v. Swan, 46 N. Y. 200; Beach v. Reynolds, 64 Barb. 506.

51. William H. Jackson Co. v. Haven, 87 App. Div. 236, 84 N. Y. Supp. 356.

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national banks to be maintained in the federal courts is merely permissive, and does not oust the state courts of jurisdiction of such actions.[52]

§ 15. Words of command, when peremptory.— Where a statute is framed in terms of command, and there is no indication from the nature or wording of the act or the surrounding circumstances that it is to receive a permissive interpretation, it will be construed as peremptory.[53] Especially is this true in the case of statutes which direct the doing by a public officer of an act for the sake of justice or which clothe a public officer or body with the power to do an act which concerns the public interests or the right of individuals.[54] In these cases, even language which is permissive in purport is many times construed as peremptory in meaning.[55] The provisions of the Criminal Code that an application for a certificate of reasonable doubt shall be made to a regularly appointed Special Term of the Supreme Court held within the district, are mandatory, and the court cannot direct that the motion be heard by another justice.[56] And a provision of the Tax Law that, on certiorari to review an assessment, costs shall be awarded against the petitioner if the reduction thereby obtained is less than half the assessment, has been held to be mandatory.[57] And in proceedings of a penal nature, such as bastardy proceedings,[58] when the statute must be closely pursued to make the proceedings effective, "must" is generally construed in a peremptory sense.[59] Where affirmative words in the provision of a statute are explicit and peremptory and used in contradistinction to permissive words in another section of the same statute, it will be deemed that it was the intention of the legislature to make such section imperative.[60] Where, after a statute has been judicially held to be permissive, the legislature amends the same and uses

52. Cooke v. National Bank of Boston, 52 N. Y. 96; Robinson v. National Bank of Newberne, 81 N. Y. 385.

53. Spears v. City of New York, 72 N. Y. 442; Rosenblum v. Gorman, 21 App. Div. 618, 47 N. Y. Supp. 754.

54. Potter v. Davis, Hill & D. Supp. 394.

55. See supra, § 13.

56. People v. Grout, 91 Misc. 451, 155 N. Y Supp. 247.

57. People ex rel. Loomis v. Purdy, 167 App. Div. 857, 153 N. Y. Supp. 793.

58. People ex rel. Lawton v. Snell, 216 N. Y. 527, 111 N. E. 50.

59. As to the construction of penal statutes, see infra, § 132.

60. People ex rel. Smither v. Richmond, 5 Misc. 26, 25 N. Y. Supp. 144. Where a statute "authorizes and directs" a public officer to do a certain act, it is mandatory. People ex rel. Sherrill v. Guggenheimer, 28 Misc. 735, 59 N. Y. Supp. 913, affirmed 47 App. Div. 9, 62 N. Y. Supp. 11.

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the word "shall," the courts will take the view that thereafter the act is to be construed as mandatory.[61]

§ 16. Words of command, when permissive.— Ordinarily words of command in a statute indicate that it is to receive a peremptory construction, and it will receive such construction when there is nothing in the act or the surrounding circumstances to evidence a legislative intent to the contrary.[62] But a statute framed in imperative language may be construed as permissive, where it is evident from the entire act construed as a whole and from the surrounding circumstances that it was not intended to receive a peremptory construction.[63] In such a case, the term "must" or "shall" will be interpreted in the sense of "may."[64] This is frequently the case where statutes provide for orders to be made by judges; if it appears evident that the judge should exercise a discretion in the granting of the order, the circumstance that the statute provides that the order "must" be granted will not deter him from exercising a discretion and denying the application if justice is thereby promoted.[65] Thus, an act providing that the court "shall order" suit to be brought on the official bond of the sheriff, though in form mandatory, is construed as investing the court with power only as it shall be required to promote the obvious ends of justice.[66] So, too, section 757 of the Code of Civil Procedure, which provides that on the death of a sole plaintiff or a sole defendant, if the cause of action survives, the court "must" allow the continuance of the action, does not deprive the court of all discretion in granting or refusing the application.[67] In much the same way, a statute which in mandatory terms requires the commitment to a public hospital of a common prostitute suffering from a communicable venereal disease, is construed as permissive.[68] A statute which provides that the board of supervisors shall do a certain act "upon a majority vote," is con-

61. Rosenblum v. Gorman, 21 App. Div. 618, 47 N. Y. Supp. 754. And see infra, §§ 114–118, as to the construction of amendatory acts.

62. See supra, § 12

63. People ex rel. Wehle v. Conner, 8 Hun 533; Matter of 34th St. R. Co., 37 Hun 442, reversed 102 N. Y. 343, 7 N. E. 172.

64. Matter of Military Parade Ground, 60 N. Y. 319; Matter of Thurber, 162 N. Y. 244, 56 N. E. 631; Carpenter v. Newland, 92 Misc. 596, 156 N. Y. Supp. 438; People ex rel. Wehle v. Conner, 8 Hun 533.

65. Jenkins v. Putnam, 106 N. Y. 272, 12 N. E. 613; Matter of Thurber, 162 N. Y. 244, 56 N. E. 631; Uhlfelder v. Tamsen, 18 Misc. 173, 41 N. Y. Supp. 438, reversed 15 App. Div. 436, 44 N. Y. Supp. 484.

66. People ex rel. Wehle v. Conner, 8 Hun 533.

67. Beach v. Reynolds, 53 N. Y. 1; Coit v. Campbell, 82 N. Y. 509.

68. People ex rel. Barone v. Fox,

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strued as requiring such act "if a majority so vote," and it is not mandatory that the board vote to do the act.[69]

Prospective or Retrospective

§ 17. Rule against retroactive operation.—As a general rule, a construction of a statute which will give it a retroactive operation is not favored by the courts, and it will not receive such a construction unless its language, either expressly or by necessary implication, requires that it be so construed.[70] It is always to be

144 App. Div. 611, 129 N. Y. Supp. 646, reversed 202 N. Y. 616, 96 N. E. 1126.

69. Matter of State of New York, 207 N. Y. 582, 101 N. E. 462. But see People ex rel. City of Lockport v. Board of Supervisors of Niagara County, 49 Hun 32, 1 N. Y. Supp. 460, 17 N. Y. St. Rep. 342, holding that an act authorizing the supervisors of a certain county, "by a majority vote of said board," to raise a certain sum for a certain purpose, is mandatory.

70. People v. Carnal, 6 N. Y. 463; People ex rel. Peake v. Board of Supervisors of Columbia County, 43 N. Y. 130; Matter of Evergreens, 47 N. Y. 216; Stone v. Flower, 47 N. Y. 566; Amsbry v. Hinds, 48 N. Y. 57; Read v. City of Buffalo, 74 N. Y. 463; Goillotel v. City of New York, 87 N. Y. 441; McMaster v. State of New York, 103 N. Y. 547, 9 N. E. 313; Estate of Miller, 110 N. Y. 216, 18 N. E. 139; Matter of Van Kleeck, 121 N. Y. 701, 25 N. E. 50; Matter of Delaware & Hudson Canal Co., 129 N. Y. 105, 29 N. E. 237; Walker v. Walker, 155 N. Y. 77, 49 N. E. 663; People ex rel. Leet v. Keller, 157 N. Y. 90, 51 N. E. 431; Germania Savings Bank of Kings County v. Village of Suspension Bridge, 159 N. Y. 362, 54 N. E. 33; Geneva & W. R. Co. v. N. Y. Cent. & H. R. Co., 163 N. Y. 228, 57 N. E. 498; Matter of Andersen, 178 N. Y. 416, 70 N. E. 921; People ex rel. Provident Sav. Life Assur. Soc. v. Miller, 179 N. Y. 227, 71 N. E. 930; Rhodes v. Sperry & Hutchinson Co., 193 N. Y. 223, 85 N. E. 1097, 34 L. R. A. (N. S.) 1143; Jacobus v. Colgate, 217 N. Y. 235, 111 N. E. 837; Matter of Town of Penfield, 3 App. Div. 30, 37 N. Y. Supp. 1056, affirmed 155 N. Y. 703, 50 N. E. 1116; Dodin v. Dodin, 16 App. Div. 42, 44 N. Y. Supp. 800, affirmed 162 N. Y. 635, 57 N. E. 1108; Stisser v. New York Cent., etc., R. Co., 32 App. Div. 98, 52 N. Y. Supp. 86; Persons v. Gardner, 42 App. Div. 490, 56 N. Y. Supp. 822, 59 N. Y. Supp. 463; Lee v. Village of Greenwich, 48 App. Div. 391, 63 N. Y. Supp. 160; Town of Hempstead v. City of New York, 52 App. Div. 182, 65 N. Y. Supp. 14; Roberts v. Cohen, 60 App. Div. 259, 70 N. Y. Supp. 57, affirmed 173 N. Y. 580, 65 N. E. 1122; Matter of Andersen, 91 App. Div. 563, 87 N. Y. Supp. 24, reversed on other grounds 178 N. Y. 416, 70 N. E. 921; Matter of Hoople, 93 App. Div. 486, 87 N. Y. Supp. 842, reversed 179 N. Y. 303, 72 N. E. 229; King v. Irving, 103 App. Div. 420, 92 N. Y. Supp. 1094; Thacher v. Board of Supervisors of Steuben County, 21 Misc. 271, 47 N. Y. Supp. 124, reversed 31 App. Div. 634, 53 N. Y. Supp. 1116; Matter of Birdsall, 22 Misc. 180, 49 N. Y. Supp. 450, affirmed 43 App. Div. 624, 60 N. Y. Supp. 1133; People ex rel. Barron v. Scannell, 30 Misc. 328, 63 N. Y. Supp. 474, affirmed 56 App. Div. 624, 67 N. Y. Supp. 1142; People v. Marshall, 7 Abb. N. Cas. 380; Guillotel v. The Mayor, etc., of N. Y., 10 Abb. N. Cas. 318; Snyder v. Snyder, 3 Barb. 621; Wadsworth v. Thomas, 7 Barb. 445, 3 Code Rep. 227; Bell v. Yates, 33 Barb. 627; Bay v. Gage, 36 Barb. 447; McMannis v. Butler, 49 Barb. 176; Matter of Eager, 58 Barb. 557, affirmed 46 N. Y. 100; Matter of Remsen, 59 Barb. 317; Quackenbush v. Danks, 1 Denio 128, affirmed 1 N. Y. 129; Palmer v. Conly, 4 Denio 374, affirmed 2 N. Y. 182; Berley v. Rampacher, 5 Duer 183; Johnson v. Burrell, 2 Hill 238; Shepard v. People, 23 How. Pr. 337; Shepherd v. People, 24 How. Pr. 388; People ex rel. Wade v. Strack, 1 Hun 96; People v. Lord, 12 Hun 282; Hill v. Nye, 17 Hun 457; Frasier v. Town

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presumed that a law was intended, as is its legitimate office, to furnish a rule of future action to be applied to cases arising subsequent to its enactment; and if all the language of a statute can be satisfied by giving it prospective operation only, it should not apply retrospectively.[71] Although the words are so general and broad as in their literal sense to comprehend existing cases, they must yet be construed as applicable only to such as may thereafter arise, unless the intention to embrace all is plainly and unequivocally expressed.[72] The general rule is not founded on constitutional objections to retroactive laws, but is an inheritance of the English common law; even an act of omnipotent Parliament is not to have a restrospective effect unless such construction is required.[73] Especially is a retroactive construction avoided where it causes the statute to infringe the constitution,[74] or to work injustice,[75] or to affect pre-existing rights or liabilities.[76] The general rule is as applicable to constitutional as to statutory provisions.[77]

§ 18. As a question of intention.— Within certain limitations, the legislature has power to pass a statute which will apply to past happenings.[78] Whether a law is prospective or retrospective

of Tompkins, 30 Hun 168; Lapham v. Marshall, 51 Hun 36, 3 N. Y. Supp. 601; Matter of Kemeys, 56 Hun 117, 29 N. Y. St. Rep. 916, 9 N. Y. Supp. 182; Matter of Delaware & Hudson Canal Co., 60 Hun 204, 14 N. Y. Supp. 585, affirmed 129 N. Y. 105, 29 N. E. 237; Matter of Wolfe, 66 Hun 389, 21 N. Y. Supp. 515, 522, reversed 137 N. Y. 205, 33 N. E. 156; Reid v. City of New York, 68 Hun 110, 52 N. Y. St. Rep. 69, 22 N. Y. Supp. 623, affirmed 139 N. Y. 534, 34 N. E. 1102; People v. Reliance Marine Ins. Co., 70 Hun 554, 24 N. Y. Supp. 190; Foley v. Royal Arcanum, 78 Hun 222, 28 N. Y. Supp. 952, affirmed 151 N. Y. 196, 45 N. E. 456; Butler v. Trustees of Parochial Fund of Protestant Episcopal Church, 92 Hun 96, 36 N. Y. Supp. 562, 71 N. Y. St. Rep. 758; Dash v. Van Kleeck, 7 Johns. 477; Jackson v. Van Zandt, 12 Johns. 169; Ganson v. City of Buffalo, 1 Keyes 454; Wood v. Oakley, 11 Paige 400; Fitch v. Livingston, 4 Sandf. 712; Matter of Thompson, 14 N. Y. St. Rep. 487; Hackely v. Sprague, 10 Wend. 113; Jackson v. Irwin, 10 Wend. 441.

71. Fitzpatrick v. Boylan, 57 N. Y. 433; New York & Oswego Midland R. Co. v. Van Horn, 57 N. Y. 473; People v. O'Brien, 111 N. Y. 1, 18 N. E. 692, 2 L. R. A. 255n; Matter of Birdsall, 22 Misc. 180, 49 N. Y. Supp. 450, affirmed 43 App. Div. 624, 60 N. Y. Supp. 1133; O'Reilly v. Utah, etc., Stage Co., 87 Hun 406, 34 N. Y. Supp. 358.

72. Matter of Protestant Episcopal School, 58 Barb. 161, 40 How. Pr. 139, reversed 46 N. Y. 178; McCahill v. Hamilton, 20 Hun 388; Reinhardt v. Fritzsche, 69 Hun 565, 23 N. Y. Supp. 958.

73. Curtis v. Leavitt, 15 N. Y. 9; Dash v. Van Kleeck, 7 Johns. 477; Salters v. Tobias, 3 Paige 338.

74. See infra, § 18.

75. People ex rel. Newcomb v. McCall, 94 N. Y. 587; McMaster v. State, 103 N. Y. 547, 9 N. E. 313; Jacobus v. Colgate, 217 N. Y. 235, 111 N. E. 837; People v. Marshall, 7 Abb. N. Cas. 380; Danks v. Quackenbush, 3 Denio 594. As to the avoidance of injustice, see infra, § 82.

76. See infra, § 18.

77. O'Reilly v. Utah, etc., Stage Co., 87 Hun 406, 34 N. Y. Supp. 358.

78. People v. Board of Supervisors of Columbia County, 43 N. Y. 130; People v. O'Brien, 111 N. Y. 1, 18 N. E. 692, 2 L. R. A. 255n; People

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is, like other questions of interpretation, to be determined by ascertaining the legislative intent.[79] If it is clear that the legislature intended an act to have a retroactive application, the courts cannot change the law and refuse to give it such application. The duty of the courts is to construe, not to enact, laws.[80] Retrospective laws are not necessarily unconstitutional,[81] but only so when they conflict with certain provisions of the state or federal constitution. The legislature cannot enact a retroactive statute which impairs the obligation of a contract,[82] or one which is an *ex post facto* law,[83] or one which takes vested rights without due process of law.[84] If the statute is susceptible of construction, the courts will interpret it so as to avoid the constitutional objection,[85] and in such a case, if the validity of the statute can be upheld by giving it a prospective operation when a contrary construction would result in its invalidity, the courts will resolve every doubt

ex rel. Pitts v. Board of Supervisors of Ulster County, 63 Barb. 83; Fire Department of West Troy v. Ogden, 59 How. Pr. 21.

79. People ex rel. Huntington v. Crennan, 141 N. Y. 239, 36 N. E. 187; People ex rel. Central Trust Co. v. Prendergast, 202 N. Y. 188, 95 N. E. 715; Tonjes v. Tonjes, 14 App. Div. 542, 43 N. Y. Supp. 941; Bay v. Gage, 36 Barb. 447. And see infra, § 52, as to legislative intent as the primary consideration in the construction of statutes.

80. People ex rel. Central Trust Co. v. Prendergast, 202 N. Y. 188, 95 N. E. 715; Matter of Grove, 64 Barb. 526, affirmed 53 N. Y. 645; Jackson v. Chapman, 3 Cow. 390; Church v. Rhodes, 6 How. Pr. 281; Hall v. Hall, 13 Hun 306. "While courts are loath to hold that a statute acts on the past, still it is their duty to so construe it when the legislature manifestly intended that result. The intention in this instance depends on the language of the act read in the light of the previous decisions of the courts and the history of legislation upon the subject." People ex rel. Central Trust Co. v. Prendergast, 202 N. Y. 188, 95 N. E. 715. And see infra, § 90, as to the avoidance of judicial legislation.

81. Burch v. Newbury, 10 N. Y. 374; Dickerson v. Cook, 16 Barb. 509.

82. Livingston v. Livingston, 173 N. Y. 377, 66 N. E. 123, 61 L. R. A. 800; McCann v. City of New York, 52 App. Div. 358, 65 N. Y. Supp. 308, affirmed 166 N. Y. 587, 59 N. E. 1125; Wilson v. Baptist Education Soc., 10 Barb. 308; Bay v. Gage, 36 Barb. 447; Danks v. Quackenbush, 3 Denio 594; Wood v. Mayor, 34 How. Pr. 501. A retroactive construction will not be given to a statute when such construction would have the effect of making a binding contract between parties where no legal contract previously existed. New York & Oswego Midland R. Co. v. Van Horn, 57 N. Y. 473.

83. Hartung v. People, 26 N. Y. 167; Mongeon v. People, 55 N. Y. 613; Bay v. Gage, 36 Barb. 447. "The commanding judicial decisions by which statutes providing for the punishment of crime have been construed have treated such laws as intended to deal with future offenses and not to fit past ones. Any other rule would afford opportunity and temptation under one guise or another for the enactment of laws by which the punishment of some special offense or special offender might be changed after the crime was committed, which would necessarily lead to intolerable discrimination and oppression." People ex rel. Adams v. Johnson, 44 Misc. 550, 90 N. Y. Supp. 134.

84. Matter of Evergreens, 47 N. Y. 216; People v. O'Brien, 111 N. Y. 1, 18 N. E. 692, 2 L. R. A. 255n; Wood v. Mather, 38 Barb. 473, affirmed 44 N. Y. 256; Dash v. Van Kleeck, 7 Johns. 477.

85. See infra, § 86.

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in favor of the validity of the statute.[86] Thus, a statute extending the term of a public officer will have only a prospective operation, for the legislature cannot extend the term of an officer after his election.[87] But when the language of the statute clearly requires a retrospective construction, it must receive such, though thereby it is held to be unconstitutional.[88] As a question of intention, a statute framed in future words, such as "shall" or "hereafter," is construed as prospective only;[89] while, on the other hand, a statute using the words "has been," "heretofore" or some other expression denoting past time, is construed as retrospective, when constitutional difficulties do not forbid.[90] And if a statute expressly recites that it shall be construed as having been in effect at a certain previous time, it is to be construed as retroactive to such time.[91] Moreover, a statute may be so worded that its application is to past acts only.[92] Such is the case in respect to curative acts.[93]

§ 19. Amendatory statutes.— It was an ancient rule in the construction of statutes that an amendatory statute was to be construed as though a part of the original enactment, and retroactive effect was given to it accordingly.[94] But this rule has been disregarded for a long time, and it is now settled that an amendatory statute has no more retroactive effect than an original independent statute upon the same subject framed in the same

86. People v. O'Brien, 111 N. Y. 1, 18 N. E. 692, 2 L. R. A. 255n; Walker v. Walker, 155 N. Y. 77, 49 N. E. 663; Germania Savings Bank of Kings County v. Village of Suspension Bridge, 159 N. Y. 362, 54 N. E. 33; Livingston v. Livingston, 173 N. Y. 377, 66 N. E. 123, 61 L. R. A. 800; Wood v. Mayor, 34 How. Pr. 501; Richardson v. Draper, 23 Hun 188; Varick v. Briggs, 6 Paige 323, affirmed 22 Wend. 543.

87. People ex rel. Le Roy v. Foley, 148 N. Y. 677, 43 N. E. 171; People ex rel. Lovett v. Randall, 151 N. Y. 497, 43 N. E. 841.

88. Westervelt v. Gregg, 12 N. Y. 202.

89. Sanford v. Bennett, 24 N. Y. 20; Matter of Howe, 112 N. Y. 100, 19 N. E. 513, 2 L. R. A. 825n; Matter of Delaware & Hudson Canal Co., 129 N. Y. 105, 29 N. E. 237; Town of Hempstead v. City of New York, 52 App. Div. 182, 65 N. Y. Supp. 14; Matter of Cauldwell, 156 App. Div. 661, 141 N. Y. Supp. 734, affirmed without opinion 209 N. Y. 538; Green v. Dikeman, 18 Barb. 535; Matter of New York Cable Railway Co., 40 Hun 1; Torbett v. Godwin, 62 Hun 409, 17 N. Y. Supp. 46; Donaldson v. O'Connor, 1 E. D. Smith 695.

90. People ex rel. Huntington v. Crennan, 141 N. Y. 239, 39 N. E. 187; Matter of Andersen, 178 N. Y. 416, 70 N. E. 921; Meyer v. Halberstadt, 44 Misc. 408, 89 N. Y. Supp. 1019; Wolfkiel v. Mason, 16 Abb. Pr. 221; Henney v. The Trustees of Brooklyn Benevolent Society, 33 Barb. 360, affirmed 39 N. Y. 333.

91. Matter of Strang, 117 App. Div. 796, 102 N. Y. Supp. 1062.

92. Henney v. The Trustees of Brooklyn Benevolent Society, 33 Barb. 360, affirmed 39 N. Y. 333; Jackson v. Caywood, 7 Wend. 246.

93. As to curative acts, see infra, § 29.

94. Benton v. Wickwire, 54 N. Y. 226.

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language would have.[95] Thus, it is the general rule that an amendment will have prospective application only, unless its language clearly indicates that it shall receive a contrary interpretation.[96] The provisions in the statute which are unchanged by the amendment retain their original force as though no amendment had been made, but the new provisions apply only from the date of the enactment.[97]

§ 20. Statutes affecting rights or liabilities.—A pre-existing right or liability, whether or not it is constitutionally protected from change, will not be affected by legislation, unless legislative intent to the contrary is obvious. The doubts, if any, will be resolved in favor of holding the subsequent statute to be prospective only.[98] Thus, though there is no vested right to a public office, a statute will not be construed retroactively so as to take away the right to the office, unless it clearly appears that such

95. Benton v. Wickwire, 54 N. Y. 226; Matter of Thompson, 14 N. Y. St. Rep. 487.

96. Goillotel v. City of New York, 87 N. Y. 441; Matter of Miller, 110 N. Y. 216, 18 N. E. 139; Walker v. Walker, 155 N. Y. 77, 49 N. E. 663; Dodin v. Dodin, 16 App. Div. 42, 44 N. Y. Supp. 800, affirmed 162 N. Y. 635; David Stevenson Brewing Co. v. Eastern Brewing Co., 22 App. Div. 523, 48 N. Y. Supp. 89, affirmed on opinion below 165 N. Y. 634; Stisser v. New York Cent., etc., R. Co., 32 App. Div. 98, 52 N. Y. Supp. 861; Matter of Hoople, 93 App. Div. 486, 87 N. Y. Supp. 842, reversed 179 N. Y. 308, 72 N. E. 229; Kelly v. Mulcahy, 131 App. Div. 639, 116 N. Y. Supp. 61; Osterhoudt v. Stade, 133 App. Div. 83, 117 N. Y. Supp. 809; Bailey v. Kincaid, 57 Hun 516, 11 N. Y. Supp. 294; Roosevelt v. Kellogg, 20 Johns. 208; Matter of Thompson, 14 N. Y. St. Rep. 487; Estate of Miller, 18 N. Y. St. Rep. 226.

97. David Stevenson Brewing Co. v. Eastern Brewing Co., 22 App. Div. 523, 48 N. Y. Supp. 89, affirmed on opinion below 165 N. Y. 634, 59 N. E. 1121. And see further as to the construction of amendatory statutes, infra, §§ 114–118.

98. Burch v. Newbury, 10 N. Y. 374; People ex rel. Ryan v. Green, 58 N. Y. 295; McMaster v. State, 103 N. Y. 547, 9 N. E. 313; Tuscarora Nation of Indians v. Williams, 79 Misc. 445, 141 N. Y. Supp. 207; Litch v. Brotherson, 16 Abb. Pr. 384, 25 How. Pr. 407; Calkins v. Calkins, 3 Barb. 305; Wadsworth v. Thomas, 7 Barb. 445, 3 Code Rep. 227; Main v. Green, 32 Barb. 448; Matter of Protestant Episcopal School, etc., 58 Barb. 161, 40 How. Pr. 139, reversed 46 N. Y. 178; Spofford v. Southern Boulevard R. Co., 15 Daly 162, 4 N. Y. Supp. 388; Jarvis v. Jarvis, 3 Edw. Ch. 462; Mills v. Hildreth, 5 Hun 364; McCahill v. Hamilton, 20 Hun 388; Reid v. Board of Supervisors of Albany County, 60 Hun 215, 14 N. Y. Supp. 594, reversed 128 N. Y. 364, 28 N. E. 367; Matter of Wolfe, 66 Hun 389, 21 N. Y. Supp. 515, 522, reversed 137 N. Y. 205, 33 N. E. 156; Reinhardt v Fritzsche, 69 Hun 565, 23 N. Y. Supp. 958; Watkins v. Haight, 18 Johns. 138; People ex rel. Huntington v. Crennan, 74 Hun 637, 26 N. Y. Supp. 167; Matter of Barringer, 29 Misc. 457, 61 N. Y. Supp. 1090; Metcalfe v. Union Trust Co., 87 App. Div. 144, 84 N. Y. Supp. 183, affirmed 181 N. Y. 39, 73 N. E. 498; Sayre v. Wisner, 8 Wend. 661. "It may possibly be inferred, from some of the cases, that the courts have refused to consider statutes retrospective, because such a construction and application of them would take away previously vested rights; but if this has entered into the consideration for the rule, it is not the only reason on which the decisions have

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was the legislative intent.[99] So, too, a statute making a town liable for defective highways or bridges does not receive a retrospective construction.[1] A statute relating to the redemption of lands sold under an execution will not receive a retrospective operation so as to interfere with purchases previously made.[2] And a statute authorizing the condemnation of public lands will not be construed as retroactive so as to justify an entry by state agents before the enactment thereof.[3] Similarly, Recording Acts,[4] Married Women's Acts,[5] and statutes providing for the survival of causes of action for wrongful death,[6] furnishing remedies for the unauthorized use of a portrait,[7] allowing interest on awards for damages for change of grade,[8] or prohibiting marriages within certain degrees of consanguinity,[9] have been construed as prospective only. Likewise, a statute prohibiting the incurring of liabilities by any department of the city of New York exceeding in amount the appropriations made for the purpose, has been held not retrospective.[10]

§ 21. Decedents' estates.—A statute taking effect after the death of a property owner will not receive a retroactive construction so as to change the devolution of his property.[11] Thus, a

been made, for, wherever the law has a tendency to change or alter as well as to take away rights previously acquired or to give a new remedy or to extend and enlarge any old one affecting previous rights, the same doctrine has been held." Jarvis v. Jarvis, 3 Edw. Ch. 462. A statute giving boards of supervisors of counties the power to pay bounties to volunteers in the military and naval service of the United States, is not retroactive, and does not authorize payments to persons who enlisted before the passage of the act. People v. The Board of Supervisors of Columbia County, 43 N. Y. 130.

99. People ex rel. Ryan v. Green, 58 N. Y. 295.

1. Frazier v. Tompkins, 30 Hun 168.

2. Huntington v. Forkson, 6 Hill 149.

3. Litchfield v. Bond, 186 N. Y. 66, 78 N. E. 719.

4. Jackson v. Chamberlain, 8 Wend. 620. A statute providing that a mortgage shall be considered as recorded from the time when it is received by the clerk, does not apply to mortgages delivered for registry before the statute went into effect. Jackson v. Van Valkenburgh, 8 Cow. 260.

5. Torrey v. Torrey, 14 N. Y. 430; Synder v. Synder, 3 Barb. 621.

6. O'Reilly v. Utah, etc., Stage Co., 87 Hun 406, 34 N. Y. Supp. 358. The provision of the Constitution of 1894 that the right of action to recover damages for injuries resulting in death shall never be abrogated, etc., does not operate retrospectively, and hence does not affect causes of action which had accrued before it went into effect. Isola v. Weber, 147 N. Y. 329, 41 N. E. 704.

7. Wyatt v. James McCreery Co., 126 App. Div. 650, 111 N. Y. Supp. 86.

8. Matter of Cauldwell, 156 App. Div. 661, 141 N. Y. Supp. 734, affirmed without opinion 209 N. Y. 538, 102 N. E. 1100.

9. Weisberg v. Weisberg, 112 App. Div. 231, 98 N. Y. Supp. 260.

10. Quinn v. City of New York, 63 Barb. 595.

11. Wood v. Mather, 38 Barb. 473, affirmed 44 N. Y. 256; Dodin v. Dodin, 17 Misc. 35, 40 N. Y. Supp. 748, affirmed 16 App. Div. 42, 44 N. Y. Supp. 800, affirmed 162 N. Y. 635, 57 N. E. 1108.

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statute changing the descent or distribution of estates will not apply to persons who died before the enactment; rights acquired through the death will not be divested subsequently by statute.[12] For example, a statute conferring on adopted children the capacity to inherit from the adopting parent is wholly prospective in operation.[13] And the construction or effect of a will is generally to be determined by the law in force at the time of the testator's decease, although a different rule is subsequently enacted; the subsequent act has no retroactive effect. Thus, an act enabling a corporation to take a devise cannot have a retroactive effect so as to invalidate a devise by a testator who died before the act was in force.[14] And an act providing that no bequest shall be deemed invalid by reason of the indefiniteness of the beneficiaries will not be applied to cases where the testator died before the enactment of the statute.[15] But until the death of the testator, rights under the will are inchoate, and an act passed before such death may be made operative on wills previously executed.[16] Thus, the validity or effect of the provisions of a will may be made dependent on the law as it existed at the time of the death of the testator.[17] To illustrate, a statute permitting the heirs of a devisee to take the devise where the devisee died before the testator, may be enacted so as to apply to a case where the testator died after the enactment of the statute though the will was made before.[18] But it is within the province of the legislature, in its discretion, to make an act entirely prospective, and thus it may enact that a will is to be construed and its effect determined according to the law in force at the time of the making of the will and that a subsequent statute shall not apply to wills already executed.[19] Matters pertaining to the mode of proof of wills are generally determined by the law in force at the time the will is offered for probate.[20]

12. Ferrie v. Public Administrator, 3 Bradf. 249.

13. Dodin v. Dodin, 17 Misc. 35, 40 N. Y. Supp. 751, affirmed 16 App. Div. 42, 44 N. Y. Supp. 800, affirmed 162 N. Y. 635, 57 N. E. 1108.

14. Bonard's Will, 16 Abb. Pr. N. S. 128.

15. Butler v. Trustees of Parochial Fund of Protestant Episcopal Church, 92 Hun 96, 36 N. Y. Supp. 562, 71 N. Y. St. Rep. 758.

16. Sherman v. Sherman, 3 Barb. 385; Lawrence v. Hebbard, 1 Bradf. 252.

17. Lawrence v. Hebbard, 1 Bradf. 252; De Peyster v. Clendining, 8 Paige 295, affirmed 26 Wend. 21.

18. Bishop v. Bishop, 4 Hill 138.

19. Parker v. Bogardus, 5 N. Y. 309; Green v. Dikeman, 18 Barb. 535; Jauncey v. Thorne, 2 Barb. Ch. 40; Price v. Brown, 1 Bradf. 291; Roberts' Will, 8 Paige 446.

20. Jauncey v. Thorne, 2 Barb. Ch. 40. As to matters of procedure, see infra, § 27.

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§ 22. Acts affecting trusts.— Statutes pertaining to trusts are generally construed as prospective only, and as not applicable to those trusts which were created before the enactment of the statute.[21] Thus, the clause of the Personal Property Law of 1897 providing for the merger of the principal fund in the beneficiary in certain cases, was construed as applying only to trusts created after its enactment.[22] And the provision of the Revised Statutes which changed the rule that the legal estate of a trustee passed to his heirs, was construed as not applying to trusts created before its enactment.[23] In fact, a prospective construction would necessarily be placed on many of such statutes to avoid their unconstitutionality.[24] But it is within the power of the legislature to make the validity of a trust created by a will depend on the law in force at the time of the death of the testator, though such law is different from the one in force at the time of the execution of the will.[25] A statute declaring that an estate conveyed to trustees for the benefit of creditors, when no different limitation is contained in the instrument, shall be deemed discharged in twenty-five years after its creation and the estate not conveyed by the grantor shall revert to the grantor, applies to assignments made before the passage of the act, for a wholly prospective construction would render the statute ineffective until twenty-five years after its passage.[26]

§ 23. Tax laws.— Laws imposing taxes are naturally prospective in their operation and do not apply to past occurrences.[27] Moreover, it is a general rule that doubts as to the application of a tax statute are to be resolved in favor of the taxpayers,[28] and this rule requires that they have only a prospective effect, where the act is ambiguous and such construction is to the advantage of the taxpayer.[29] Thus, inheritance tax laws are construed as applying only to property inherited after the statute has gone into

21. Metcalfe v. Union Trust Co. of New York, 181 N. Y. 39, 73 N. E. 498.
22. Metcalfe v. Union Trust Company, 181 N. Y. 39, 73 N. E. 498.
23. Wood v. Mather, 38 Barb. 473, affirmed 44 N. Y. 249.
24. See supra, § 18, and infra, § 86.
25. De Peyster v. Clendining, 8 Paige 295, affirmed 26 Wend. 21.
26. Kip v. Hirsh, 103 N. Y. 565, 9 N. E. 317.
27. Section 140 of the Tax Law of 1896, as re-enacted in the Tax Law of 1909, authorizing the cancellation of invalid or ineffectual tax sales and the refund of the purchase price, is prospective. Bandler v. Hill, 84 Misc. 359, 146 N. Y. Supp. 98, affirmed 165 App. Div. 970, 148 N. Y. Supp. 1105.
28. See infra, § 150, as to the construction of tax laws.
29. Matter of Harbeck, 161 N. Y. 211, 55 N. E. 850.

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effect.[30] Likewise, a statute authorizing an annual tax upon the gross amount of premiums received during the preceding calendar year by every domestic insurance company, was held not retroactive and did not impose a tax upon premiums derived from contracts made prior to the time the statute took effect.[31] But the method of procedure for the ascertainment of a special tax, such as an inheritance tax, is generally controlled by the statute in force at the time when the proceedings are taken; a change in the procedure is retroactive, unless the old procedure is saved for past taxes.[32]

§ 24. Statutes of limitation.— To a reasonable extent, a statute of limitations may be enacted which will apply to causes of action which have already accrued.[33] The running of a statute of limitations does not discharge an obligation; it merely deprives the holder of access to the courts for its enforcement; and, hence, the legislature, after an obligation has become barred by the existing statute, may change the period of limitation so that the obligation becomes enforceable in the courts.[34] And the legislature may shorten the limitation by a retrospective law so that a cause will become barred in a shorter time than the law prescribed at the time of its accrual;[35] but, in such case, to avoid the constitutional inhibition against the impairment of contracts, a reasonable opportunity must be afforded a contract creditor of proceeding against the debtor before the limitation has expired.[36] Inasmuch as a statute of limitations takes away the remedy only and does not impair the obligation, it applies to contracts made before as well as to those made after its passage, unless it contains some provisions saving prior obligations.[37] But such acts frequently contain language indicating that their effect is to be confined to prospective causes of action.[38] Thus, it was held that a limitation to

30. Matter of Howe, 112 N. Y. 100, 19 N. E. 513, 2 L. R. A. 825; Matter of Harbeck, 161 N. Y. 211, 55 N. E. 850; Matter of Abraham, 151 App. Div. 441, 135 N. Y. Supp. 891.

31. People ex rel. Provident Sav. Life Assur. Soc. v. Miller, 179 N. Y. 227, 71 N. E. 930.

32. Matter of Davis, 149 N. Y. 539, 44 N. E. 185; Matter of Abraham, 151 App. Div. 441, 135 N. Y. Supp. 891.

33. Lang v. Lutz, 180 N. Y. 254, 73 N. E. 24.

34. Hulbert v. Clark, 128 N. Y. 295, 28 N. E. 638, 14 L. R. A. 59; Matter of Strang, 117 App. Div. 796, 102 N. Y. Supp. 1062.

35. Reid v. Board of Supervisors of Albany County, 128 N. Y. 364, 28 N. Y. Supp. 367; Matter of Hoople, 93 App. Div. 486, 87 N. Y. Supp. 842, reversed 179 N. Y. 308, 72 N. E. 229. See also Kelly v. Brownlow, 54 N. Y. Super. Ct. 129.

36. Reid v. Supervisors of Albany County, 128 N. Y. 364, 28 N. E. 367; Parmenter v. New York, 135 N. Y. 154, 31 N. E. 1035; Gilbert v. Ackerman, 159 N. Y. 118, 53 N. E. 753.

37. Acker v. Acker, 81 N. Y. 143.

38. Goillotel v. City of New York,

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actions of ejectment for dower, requiring the widow to demand her dower within twenty years after the death of her husband, did not apply where the husband died previous to the act's going into effect.[39] And the act requiring a new promise or acknowledgment to be in writing in order to avoid the effect of the limitations, where previously an oral promise or acknowledgment was sufficient, was construed as prospective only.[40] In the absence of any evidence or intent to the contrary, it has been held that a statute barring claims against a city for personal injuries when not presented within three months after the injury, will not be construed as applying to injuries incurred before its enactment.[41]

§ 25. **Exemption laws.**— Exemption laws which are wholly prospective in their operation are valid,[42] but a subsequent law of a state which so affects the remedy on a contract obligation as substantially to impair or lessen the value of the contract is forbidden by the United States Constitution.[43] If the effect of a statute creating or increasing exemptions from execution is to leave insufficient property for the satisfaction of a debtor's prior contract obligations, the statute violates the clause of the Federal Constitution prohibiting the impairment of contracts.[44] Thus, if there is any doubt whether an exemption law shall be construed as retroactive, the doubt will be resolved so as to avoid violation of the provisions of the Federal Constitution.[45] But there is no constitutional inhibition against depriving a debtor of an exemption which he has enjoyed; and a retroactive statute may be enacted which allows the creditor to resort to certain property which was exempt when the obligation in question was incurred.[46] Whether a statute of this nature applies to past obligations is purely a question of interpretation. Thus, the amendment to section 1391

87 N. Y. 441; Reid v. Supervisors of Albany County, 128 N. Y. 364, 28 N. E. 367; Johnson v. Burrell, 2 Hill 238; Williamson v. Field, 2 Sandf. Ch. 533; People v. Supervisors of the County of Columbia, 10 Wend. 363; Ward v. Kilts, 12 Wend. 137.

39. Sayre v. Wisner, 8 Wend. 661.

40. Esselstyn v. Weeks, 12 N. Y. 635; Van Rensselaer v. Livingston, 12 Wend. 490.

41. Williams v. City of Oswego, 25 Hun 36.

42. Quackenbush v. Danks, 1 Denio 128, affirmed 1 N. Y. 129.

43. Edwards v. Kearzey, 96 U. S. 595, 24 L. ed. 793.

44. Gunn v. Barry, 15 Wall. (U. S.) 610, 21 L. ed. 212; Edwards v. Kearzey, 96 U. S. 595, 24 L. ed. 793; Danks v. Quackenbush, 3 Denio 594. The holding in Morse v. Goold, 11 N. Y. 281, that retroactive exemption laws are constitutional, must be considered as modified by the federal decisions, which are the paramount authority on the effect of the Federal Constitution.

45. Danks v. Quackenbush, 3 Denio 594.

46. Myers v. Moran, 113 App. Div. 427, 99 N. Y. Supp. 269.

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of the Code of Civil Procedure authorizing the garnishment of wages in certain cases, was held to apply to judgments recovered before the enactment of the amendment.[47] Statutes allowing exemptions from taxation are not, as a general rule, retroactive.[48] But a statute enacting that certain property shall be exempt from taxation does not constitute a contract with the owner, and the legislature may subsequently remove the exemption.[49]

§ 26. Remedial statutes.— Remedial statutes are liberally construed to the end that the evil results of the former law may be obviated.[50] The tendency of the courts is to construe such statutes so as to spread their beneficial results as widely as possible, and the view is adopted that the general rule, requiring express words in a statute in order to authorize a retroactive construction, is not to be applied in the construction of such statutes, where vested or constitutional rights are not affected.[51] Thus, a statute designed to legitimatize the issue of marriages otherwise void, may properly be applied to marriages before the enactment of the statute, if the language permits such construction.[52] So, too, an act authorizing the marriage of slaves has been construed as retrospective so as to legitimatize the issue of past defective marriages of such persons.[53] Likewise, an act in relation to fraud in assessments for local improvements, authorizing the vacation of certain assessments, has been applied to those made before the passage of the act.[54] Similarly, a statute authorizing a mechanic's lien has included within its scope building contracts entered into before the statute became a law.[55] And an act in reference to the

47. Laird v. Carton, 196 N. Y. 169, 89 N. E. 822, 25 L. R. A. (N. S.) 189; Myers v. Moran, 113 App. Div. 427, 99 N. Y. Supp. 269; Hedges v. Keiser, 135 App. Div. 12, 119 N. Y. Supp. 751; Meyer v. Halberstadt, 44 Misc. 408, 89 N. Y. Supp. 1019; Bayliss v. Ryan, 64 Misc. 146, 117 N. Y. Supp. 1022. The holdings in Kelly v. Mulcahy, 131 App. Div. 639, 116 N. Y. Supp. 61, and Osterhoudt v Stade, 133 App. Div. 83, 117 N. Y. Supp. 809, to the contrary, are deemed to be overruled

48. Matter of Van Kleeck, 121 N. Y. 701, 25 N. E. 50.

49. People ex rel. Davies v. Com'rs of Taxes of City of New York, 47 N. Y. 501.

50. See infra, § 153.

51. Burch v. Newbury, 10 N. Y. 374; Matter of Hoople, 93 App. Div. 486, 87 N. Y. Supp. 842, reversed 179 N. Y. 308, 72 N. E. 229; Brower v. Bowers, 1 Abb. App. Dec. 214; People ex rel. Pitts v. Board of Supervisors of Ulster County, 63 Barb. 83; Matter of New York Express Co., 23 Hun 615; Fetes v. Volmer, 58 Hun 1, 11 N. Y. Supp. 552.

52. Brower v. Bowers, 1 Abb. App. Dec. 214.

53. Jackson v. Lervey, 5 Cow. 397.

54. Matter of Beams, 17 How. Pr. 459.

55. Sullivan v. Brewster, 1 E. D. Smith 681; Miller v. Moore, 1 E. D. Smith 739; Hauptman v. Catlin, 3 E. D. Smith 666, affirmed 20 N. Y. 247. The Mechanic's Lien Law of 1851, however, did not apply to work done before it went into effect, though it was construed to apply

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accounting of supervisors, authorizing an action to be brought in the name of the town against a supervisor who has neglected to account, etc., has been construed to extend to cases which arose before the approval of the act.[56]

§ 27. Matters of procedure.— So long as a party is left with an available remedy to enforce obligations due to him, the legislature has the power to change the procedure and remedies by which they shall be enforced.[57] To this extent statutes of procedure may be enacted which will apply to pre-existing causes of action.[58] And statutes affecting remedies or rules of procedure for the enforcement of rights are declared to be applicable to pre-existing causes of action on grounds which would be deemed insufficient to give a retroactive effect to statutes enlarging or restricting substantive rights.[59] Hence, it is generally held that a change in court procedure will affect pending actions and proceedings, unless the language of the act excludes them from its operation.[60] Thus, statutes regulating the pleadings of the parties,[61]

to contracts previously made. Donaldson v. O'Connor, 1 E. D. Smith 695; Miller v. Moore, 1 E. D. Smith 739.

56. Town of Guilford v. Cooley, 58 N. Y. 116.

57. Conkey v. Hart, 14 N. Y. 22; Dickerson v. Cook, 16 Barb. 509; Matter of Grove, 64 Barb. 526, affirmed on opinion below 53 N. Y. 645; Gardner v. Barney, 24 How. Pr. 467. Although a contract contains a provision that a party may resort to a specified legal remedy for its enforcement, a general act of the state abolishing such remedy does not impair the obligation of the contract within the meaning of the Federal Constitution. Conkey v. Hart, 14 N. Y. 22.

58. People ex rel. Spain v. Coyle, 55 App. Div. 223, 66 N. Y. Supp. 827; Nicholson v. City of New York, 85 Misc. 563, 147 N. Y. Supp. 779, affirmed 165 App. Div. 921, 150 N. Y. Supp. 1099; Dickerson v. Cook, 16 Barb. 509; Tribune Assoc. v. Mayor, etc., of New York City, 48 Barb. 240; Matter of Grove, 64 Barb. 526, affirmed 53 N. Y. 645; People v. Tibbets, 4 Cow. 384; Lazarus v. Metropolitan El. R. Co., 83 Hun 553, 32 N. Y. Supp. 48, affirmed 145 N. Y. 581, 40 N. E. 240.

59. Jacobus v. Colgate, 217 N. Y. 235, 111 N. E. 837; O'Reilly v. Utah, etc., Stage Co., 87 Hun 412, 34 N. Y. Supp. 358.

60. Matter of Davis, 149 N. Y. 539, 44 N. E. 185; Peace v. Wilson, 186 N. Y. 403, 79 N. E. 329; Laird v. Carton, 196 N. Y. 169, 89 N. E. 822, 25 L. R. A. (N. S.) 189; Persons v. Gardner, 42 App. Div. 490, 56 N. Y. Supp. 822, 59 N. Y. Supp. 463; Matter of Ludlow Street, 59 App. Div. 180, 68 N. Y. Supp. 1046, affirmed 172 N. Y. 542, 65 N. E. 494; Rouge v. Rouge, 15 Misc. 36, 36 N. Y. Supp. 436, 71 N. Y. St. Rep. 487; Nicholson v. City of New York, 85 Misc. 563, 147 N. Y. Supp. 779, affirmed 165 App. Div. 921, 150 N. Y. Supp. 1099; Litch v. Brotherson, 16 Abb. Pr. 384, 25 How. Pr. 407; People v. Tibbets, 4 Cow. 384; Matter of N. Y. Express Co., 23 Hun 615; Lazarus v. Metropolitan El. R. Co., 83 Hun 554, 32 N. Y. Supp. 48, affirmed 145 N. Y. 581, 40 N. E. 240; Larkin v. Mann, 2 Paige 27; Aymer v. Gault, 2 Paige 284; Brown v. Mitchell, Col. & C. Cas. 88. "It is the settled law that statutes relating to the procedure are retroactive and prospective in their application without affirmative provisions to that effect." Peace v. Wilson, 186 N. Y. 403, 79 N. E. 329.

61. Devlin v. City of New York, 4

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changing the rules of evidence,[62] reviving proceedings against deceased litigants,[63] authorizing the submission of certain issues to a jury,[64] making changes in the mode of procuring and impaneling a jury,[65] providing the proofs to be made for the entry of judgments,[66] depriving corporations of the defense of usury,[67] providing for costs and allowances,[68] have not been confined in their operation to actions commenced after their enactment. So, too, the procedure for the opening of streets,[69] or the issuance of town bonds,[70] may be changed after the commencement of the proceedings. But the intention is not to be attributed to the legislature of enacting a new rule of law to control a pending cause, where the effect of such a construction would be to confer a right of possession, which is a substantial legal right, as contradistinguished from a mere remedy, and which right had no existence

Misc. 106, 53 N. Y. St. Rep. 455, 23 N. Y. Supp. 888.

62. Southwick v. Southwick, 49 N. Y. 510; Stokes v. People, 53 N. Y. 164; People v. Beckwith, 108 N. Y. 67, 15 N. E. 53; People v. Qualey, 210 N. Y. 202, 104 N. E. 138; Southwick v. Southwick, 9 Abb. Pr. (N. S.) 109; McCotter v. Hooker, 2 Edm. Sel. Cas. 260. But it has been held that section 841b of the Code of Civil Procedure, providing that on the trial of an action to recover damages for causing death the defense of contributory negligence shall be pleaded and proved by the defendant, is not retroactive. Sackheim v. Pigueron, 163 App. Div. 180, 148 N. Y. Supp. 27; De Baud v. Long Island R. Co., 163 App. Div. 600, 148 N. Y. Supp. 581. But see, to the contrary, Nicholson v. City of New York, 85 Misc. 563, 147 N. Y. Supp. 779, affirmed 165 App. Div. 921, 150 N. Y. Supp. 1099; Gazzola v. O'Brien, 169 App. Div. 602, 155 N. Y. Supp. 350. And it has been held that section 202a of the Labor Law, providing that in an action against a master for injuries to an employee caused by negligence, the contributory negligence of the employee shall be a defense to be pleaded and proved by the defendant, is not retroactive. Clancy v. New York, etc., R. Co., 157 App. Div. 337, 142 N. Y. Supp. 258.

63. Matter of Grove, 64 Barb. 526, affirmed 53 N. Y. 645.

64. Eggers v. Manhattan Ry. Co., 27 Abb. N. C. 463, 42 N. Y. St. Rep. 123, 21 Civ. Pro. 403, 18 N. Y. Supp. 181; Underhill v. Manhattan Ry. Co., 27 Abb. N. C. 478, 21 Civ. Pro. 441, 18 N. Y. Supp. 43.

65. Stokes v. People, 53 N. Y. 164.

66. Tribune Assoc. v. City of New York, 48 Barb. 240.

67. Curtis v. Leavitt, 15 N. Y. 9; Southern Life Insurance & Trust Co. v. Packer & Prentice, 17 N. Y. 51.

68. Defendorf v. Defendorf, 42 App. Div. 166, 59 N. Y. Supp. 163; Steward v. Lamoreaux, 5 Abb. Pr. 14; Crary v. Norwood, 5 Abb. Pr. 219; Ackley v. Tarbox, 19 Abb. Pr. 119; Matter of Sexton, 1 Dem. 3; Rich v. Husson, 1 Duer 617, 11 N. Y. Leg. Obs. 119; Truscutt v. King, 4 How. Pr. 173; Torry v. Hadley, 14 How. Pr. 357; McCann v. Bradley, 15 How. Pr. 79; Fisher v. Hunter, 15 How. Pr. 156; Jackett v. Judd, 18 How. Pr. 385; Jones v. Underwood, 18 How. Pr. 532; Fargo v. Hamlin, 5 N. Y. St. Rep. 297; Matter of Mace, 4 Redf. 325; Kanouse v. Martin, 2 Sandf. 739; People ex rel. Berry v. Herkimer, 4 Wend. 210. Provisions relative to security for costs in an action by an infant plaintiff may apply to pending actions. Shultz v. Third Ave. R. Co., 17 Week. Dig. 207. If the new law relative to costs expressly excludes pending actions, the costs in such actions are necessarily taxed according to the old law. Truscutt v. King, 4 How. Pr. 173.

69. Matter of Commissioner of Public Works, 111 App. Div. 285, 97 N. Y. Supp. 503, affirmed 185 N. Y. 391, 78 N. E. 146.

70. Webster v. White Plains, 93 App. Div. 398, 87 N. Y. Supp. 783.

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at the time the suit was brought.[71] And it is clear that the legislature in enacting a new mode of procedure may save pre-existing causes of action from the operation of the new law. If such is the intent of the legislature, the new law will have no retroactive force.[72] The rule permitting statutes of procedure to operate retroactively does not generally, however, reach a case where there was no remedy before the statute. Thus, section 982a of the Code of Civil Procedure, allowing the maintenance in this state of an action for injuries to real property located in another state, has been held to be prospective only.[73]

§ 28. Statutes affecting judgments.—A judgment which has finally established the rights of litigating parties is, to a certain extent, constitutionally protected from the interference of the legislature. Thus, the law-making body may not pass a statute authorizing a modification of past judgments, where previously the court had no power to make the modification.[74] And, after the rendering of a judgment and an exhaustion of all review by appeal, the legislature cannot pass a statute giving a defeated party another or a further appeal.[75] But, while the right of appeal cannot be granted so as to affect a past judgment, a present right of appeal may be abrogated by a retroactive statute.[76] The rule does not work both ways, for there is no vested right to an appeal, though there is to a final judgment. The particular mode or practice on an appeal, like other questions of procedure,[77] is within the control of the legislature, and is generally governed by the law at the time the proceedings are taken. Thus, a statute prescribing appeal practice may be and generally is applicable to

71. National Park Bank v. Goddard, 9 Misc. 626, 30 N. Y. Supp. 417.

72. Truscutt v. King, 4 How. Pr. 173; Randall v. Sackett, 56 How. Pr. 225; Burnham v. Brennan, 60 How. Pr. 310; Trist v. De Cabezas, 2 Robt. 708, 18 Abb. Pr. 143. A retroactive effect will not be given to a statute requiring an assignee for the benefit of creditors to give bond before selling or converting the property. Smith v. Newell, 32 Hun 501.

73. Jacobus v. Colgate, 217 N. Y. 235, 111 N. E. 837.

74. Burch v. Newbury, 10 N. Y. 374. The amendments to section 1759 of the Code of Civil Procedure, authorizing the modifications of final decrees in matrimonial actions, were not allowed to have a retrospective force. Livingston v. Livingston, 173 N. Y. 377, 66 N. E. 123, 61 L. R. A. 800; Walker v. Walker, 155 N. Y. 77, 49 N. E. 663.

75. Germania Savings Bank v. Village of Suspension Bridge, 159 N. Y. 362, 54 N. E. 33.

76. Matter of Palmer, 40 N. Y 561. "The right of appeal is not guaranteed by the Constitution. That is a matter entirely within the legislative judgment. Even the general right to appeal, in the absence of a constitutional provision to the contrary, is but a privilege which the legislature may take away." Leach v. Auwell, 154 App. Div. 170, 138 N. Y. Supp. 975.

77. See supra, § 27, as to matters of procedure.

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both future and pending appeals.[78] But the legislature, when enacting a new rule for the procedure upon appeals, may save pending proceedings from the effect thereof and declare that they shall be determined pursuant to the old practice. In such a case, the new act is wholly prospective.[79]

§ 29. Curative acts.— There is one class of statutes which are particularly retrospective in their operation. Such are "curative" acts which are designed to remedy some defect in proceedings already prosecuted.[80] Thus, the legislature frequently enacts that certain proceedings for the collection of taxes are valid, despite irregularities in the procedure for the levy of the tax or the sale of the property for the enforcement thereof.[81] Or it may pass a law to cure irregularities in a municipal subscription to a public improvement.[82] Similarly, where there has been an irregularity in the organization of a corporation, the defect may be cured by a subsequent enactment.[83] So, too, an irregularity in the publication of municipal advertisements, notices and proceedings, may be remedied by subsequent legislation.[84] The courts sustain the validity of these curative acts where the defect in the proceedings is one with which the legislature might in the first instance have dispensed.[85] But where the defect is jurisdictional, the subsequent proceedings are void, and the curative act will not bring

78. People v. Herkimer, 4 Wend. 206.

79. Rice v. Floyd, 1 N. Y. 608; Tilley v. Phillips, 1 N. Y. 610; Bolles v. Duff, 55 Barb. 580, 7 Abb. Pr. N. S. 385, 38 How. Pr. 504; People ex rel. Coon v. Gilbert, 3 Code Rep. 181; Washburn v. Overseers of the Poor of Hebron, 9 Johns. 119; Overseers of the Poor of Town of Milan v. Dutchess County Supervisors, 14 Wend. 71.

80. New York, etc., R. Co. v. O'Brien, 121 App. Div. 819, 106 N. Y. Supp. 909, affirmed without opinion 192 N. Y. 558, 85 N. E. 1113.

81. People ex rel. American Exchange Nat. Bank v. Purdy, 196 N. Y. 270, 89 N. E. 838; Turner v. Boyce, 11 Misc. 502, 33 N. Y. Supp. 433, 67 N. Y. St. Rep. 281. Where the legislature has inadvertently repealed an exemption from certain taxes, it has power by a retrospective act to correct the repeal, in such wise as to relieve the taxpayer from taxes assessed between the date of the repeal and the passage of the act restoring the exemption. Matter of Rochester Trust, etc., Co., 42 Misc. 581, 87 N. Y. Supp. 628.

82. People ex rel. Albany & Susquehanna R. Co. v. Mitchell, 35 N. Y. 551; Town of Duanesburgh v. Jenkins, 57 N. Y. 177.

83. Defects in the organization of a corporation are deemed repealed by subsequent legislative recognition of the company as a legal corporation. White v. Coventry, 29 Barb. 305; Black River, etc., R. Co. v. Barnard, 31 Barb. 258.

84. People ex rel. Collins v. Spicer, 99 N. Y. 225, 1 N. E. 680.

85. People ex rel. Pells v. Board of Supervisors of Ulster County, 65 N. Y. 300; Cromwell v. MacLean, 123 N. Y. 474, 25 N. E. 932; Smith v. City of Buffalo, 159 N. Y. 427, 54 N. E. 62; City of Rochester v. Fourteenth Ward, etc., Association, 183 N. Y. 23, 75 N. E. 692; People ex rel. American Exchange National Bank v. Purdy, 196 N. Y. 270, 89 N. E. 838; Turner v. Boyce, 11 Misc. 502, 33 N. Y. Supp. 433, 67 N. Y. St. Rep.

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life into them.[86] Thus, if a tax assessment is invalid, the subsequent proceedings for the sale of the land for the non-payment of the tax are void, and cannot be cured by a retroactive enactment of the legislature.[87] The ratification of prior unlawful acts, whether by the legislature or by individuals, is a matter of intention and should be made to appear; and sound policy requires that legislative ratification of what was previously unlawful should be found in plain language, and not left to uncertain implication and doubtful inferences.[88]

II. Enactment of Statutes

§ 30. Law-making power vested in legislature.— The Constitution of the state of New York provides that, "The legislative power of the state shall be vested in the senate and the assembly."[89] All legislative power is thus conferred on the two bodies constituting the legislature, subject only to such restrictions as are contained in the state and federal constitutions.[90] Subject to such restrictions, its acts may be general in their application; or, in its discretion, it may enunciate a rule for special cases.[91] The government, as organized under the Constitution, was designed to be that of a representative republic. Under the Constitution, the legislature is prohibited from converting it into a pure democracy, under which the people frame and enact their own laws. The organization of the law-making power is one of the principal purposes of a constitutional charter, and this is effected by means of a system of representation through which the people at stated periods delegate to citizens chosen by them the

281; Matter of Rochester Trust, etc., Co., 42 Misc. 581, 87 N. Y. Supp. 628; Syracuse City Bank v. Davis, 16 Barb. 188.

86. Cromwell v. MacLean, 123 N. Y. 474, 25 N. E. 932; Joslyn v. Rockwell, 128 N. Y. 334, 28 N. E. 604; People ex rel. American Exchange National Bank v. Purdy, 196 N. Y. 270, 89 N. E. 838; Turner v. Boyce, 11 Misc. 502, 33 N. Y. Supp. 433, 67 N. Y. St. Rep. 281; City of Rochester v. Farrar, 44 Misc. 394, 89 N. Y. Supp. 1035; People ex rel. Bingham v. State Water Supply Commission, 70 Misc. 265, 126 N. Y. Supp. 637, reversed on other grounds 153 App. Div. 587, 138 N. Y. Supp. 746, affirmed 209 N. Y. 299, 103 N. E. 162.

87. Cromwell v. MacLean, 123 N Y. 474, 25 N. E. 932; City of Rochester v. Farrar, 44 Misc. 394, 89 N. Y Supp. 1035.

88. Cox v. City of New York, 103 N. Y. 519, 9 N. E. 48.

89. Const. Art. III, § 1.

90. People ex rel. McLean v. Flagg, 46 N. Y. 401; People v. Cannon, 139 N. Y. 32, 34 N. E. 759; Matter of Sherrill v. O'Brien, 188 N. Y. 185, 81 N. E. 124. See also the Annotated Constitution in this work, Art. III, § 1.

91. People ex rel. Wood v. Draper, 15 N. Y. 532; People ex rel. Foster v. Justice, 147 N. Y. Supp. 257. The legislature has power by special act to authorize a sale of the real estate

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power of enacting laws under which all are to be governed.[92] The legislature cannot delegate the law-making power to the people.[93] Nor can the courts exercise legislative functions; in the judiciary is lodged the power of interpretation, not the power of legislation.[94] The courts do not sit in review of the discretion of the legislature, or determine upon the expediency, wisdom or propriety of legislative action in matters within the power of the legislature.[95] But powers, not strictly and exclusively legislative in their nature, may be exercised by the legislature[96] and to a limited extent may be delegated to inferior boards or commissions. Thus, the power to fix the rates to be charged by public utility corporations may be delegated to public service commissions.[97] Likewise, municipal corporations and boards of health may be empowered to pass by-laws and ordinances to carry out the purposes of their creation.[98]

§ 31. **Legislative procedure.**— The Constitution provides the main outlines of the procedure for the enactment of statutes, though the rules of its own proceedings are left to be determined by each house of the legislature.[99] Any bill may originate in either branch of the legislature, and all bills passed by one house may be amended by the other.[1] The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.[2] No bill shall be passed or become a law unless it shall

of certain infants, including the contingent interests of those not in being. Brevoort v. Grace, 53 N. Y. 245; Ebling v. Dreyer, 149 N. Y. 460, 44 N. E. 155.

92. Stanton v. Board of Supervisors of Essex County, 191 N. Y. 428, 84 N. E. 380.

93. See infra, § 35, as to the submission of laws to popular vote.

94. See infra, § 90, as to the avoidance of judicial legislation.

95. And the legislature has no judicial authority and cannot control the courts in respect to the construction of a statute previously enacted. People ex rel. Mutual Life Ins. Co. of New York v. Board of Supervisors of City and County of New York, 16 N. Y. 424; Rand v. Mass. Ben. L. Assoc., 18 Misc. 336, 42 N. Y. Supp. 26. And see infra, § 104, as to constructions declared by statute.

96. Stanton v. Board of Supervisors of Essex County, 191 N. Y. 428, 84 N. E. 380, wherein it was said: "It will be observed, however, that while the provision of the Constitution in question vests in the senate and assembly legislative power, it does not prohibit the legislature from exercising powers or of enacting laws which are not strictly legislative."

97. Village of Saratoga Springs v. Saratoga Gas, Electric Light & Power Co., 191 N. Y. 123, 83 N. E. 693, 14 Ann. Cas. 606, 18 L. R. A. (N. S.) 713. See also the Annotated Constitution in this work, Art. III, § 1, 27.

98. Coe v. Schultz, 47 Barb. 64.

99. See the Annotated Constitution in this work, Art. III, § 10.

1. See the Annotated Constitution in this work, Art. III, § 13.

2. See the Annotated Constitution in this work, Art. III, § 14.

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have been printed and placed upon the desks of the members in its final form at least three calendar legislative days prior to its final passage, unless the governor, or acting governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the state; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question of its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal.[3] The object of the provision requiring bills to lay on the desks of the members for three days prior to final passage is to prevent hasty and careless legislation, to prohibit amendments at the last moment, and to secure publicity.[4] A calendar day includes the time from midnight to midnight.[5] Sunday or a public holiday, other than a half holiday, must be excluded if it is the last day; otherwise it must be counted, and in making the computation the day upon which the event happens is deemed the day from which the reckoning is made.[6] A statute is not invalid, though it is passed by the assembly the second day after its passage by the senate, where the bill originated in the senate and lay on the desks of the members of both houses for three days before its passage by the senate, no change in the bill having been made by the assembly.[7] The form of the command, prohibiting a bill from becoming a law unless the practice is followed, indicates that the provisions are mandatory, not merely directory.[8] On the other hand, it has been said that the clause relative to the entry of the yeas and nays is merely directory.[9]

§ 32. Majority vote insufficient in certain cases.— Under Art. III, § 20 of the Constitution, the assent of two-thirds of the members elected to each branch of the legislature is requisite to every bill appropriating the public moneys or property for local

3. See the Annotated Constitution in this work, Art. III, § 15.
4. People ex rel. Hatch v. Reardon, 184 N. Y. 431, 77 N. E. 970, 8 L. R. A. (N. S.) 314, affirmed 204 U. S. 152, 51 L. ed. 415, 27 S. Ct. 188. See also the Annotated Constitution in this work, Art. III, § 15.
5. General Construction Law, § 19.
6. General Construction Law, § 20. And see Kittinger v. Buffalo Traction Co., 160 N. Y. 377, 54 N. E. 1081.
7. People ex rel. Hatch v. Reardon, 184 N. Y. 431, 77 N. E. 970, 8 L. R. A. (N. S.) 314, affirmed 204 U. S. 152, 51 L. ed. 415, 27 S. Ct. 188.
8. People ex rel. Hatch v. Reardon, 184 N. Y. 431, 77 N. E. 970, 8 L. R. A. (N. S.) 314, affirmed 204 U. S. 152, 51 L. ed. 415, 27 S. Ct. 188. As to the distinction between mandatory and directory statutes, see supra, §§ 6–11.
9. People ex rel. Scott v. Supervisors of Chenango County, 8 N. Y 317, per Willard, J.

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or private purposes.[10] Under the Constitution of 1821, a two-thirds vote was requisite also to every bill creating, continuing, altering, or renewing, any body politic or corporate;[11] but this requirement was not continued in the Constitution of 1846. Nor does this provision enter into the contract between the state and the corporation; and, hence, so far as this requirement is concerned, the legislature since 1846 has had the power to amend a corporate charter by a majority vote though the charter was granted when the provision was in force.[12] On the final passage of certain tax bills, it is required that three-fifths of all the members elected to either house shall be necessary to constitute a quorum;[13] but, if such quorum is present, the bill may be passed by a vote of a majority of the members elected.

§ 33. Motive of legislature immaterial.— The purpose and object of a statute is a matter which may properly be considered as an aid to its interpretation,[14] but the motives which led the legislature to pass a bill cannot be considered in order to effect its destruction.[15] In considering a statute, the courts are bound to assume that the legislature acted with the best motives and with the sole purpose of accomplishing what the statute purports.[16] That the legislation is designed to promote the private interests of certain members of the legislature, or of other persons, does not affect the validity of the statute. An act of the legislature cannot be impeached in a court of law upon the ground that it was procured by means of fraudulent representations made to the legislature, or by the concealment from that body of material facts.[17] Fraud or conspiracy in the procurement of its enactment cannot be shown to vitiate a statute which is passed in accordance

10. Mather v. Delafield, 3 N. Y. Leg. Obs. 9.

11. Smith v. Helmer, 7 Barb. 416; De Bow v. The People, 1 Denio 9, overruled in Tifford v. Livingston, 2 Denio 380; Commercial Bank of Buffalo v. Sparrow, 2 Denio 97; Purdy v. People, 4 Hill 384; People v. Morris, 13 Wend. 325; People ex rel. Lynch v. City of New York, 25 Wend. 680.

12. Matter of Reciprocity Bank, 22 N. Y. 9.

13. See the Annotated Constitution in this work, Art. III, § 25.

14. See infra, §§ 57, 58.

15. Mason v. Jones, 3 N. Y. 375; People ex rel. Wood v. Draper, 15 N. Y. 532; People v. Petrea, 92 N. Y. 128; Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345, 28 N. E. 358, 14 L. R. A. 481; Kittinger v. Buffalo Traction Co., 160 N. Y. 377, 54 N. E. 1081; People ex rel. Swift v. Luce, 204 N. Y. 478, 97 N. E. 850, 1913C Ann. Cas. 1151; Matter of City of New York, 217 N. Y. 45, 111 N. E. 266; People v. Utica Ins. Co., 15 Johns. 358.

16. Kittinger v. Buffalo Traction Co., 160 N. Y. 377, 54 N. E. 1081.

17. Englishbee v. Helmuth, 7 N. Y. Leg. Obs. 186, reversed 3 N. Y. 294.

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with the constitutional requirements.[18] The courts have no power to investigate the motives and influences which led to the enactment of a statute; and even if they had the power, no relief could be afforded.[19] The function of the court is to interpret the statute, leaving its repeal to the law-making body.[20]

§ 34. Approval by governor.— The Constitution provides for the presentation of bills to the governor for his approval, as follows: "Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections to the other house by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases, the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment. If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately

18. Baird v. City of New York, 96 N. Y. 567.

19. Mason v. Jones, 3 N. Y. 375; Matter of New York & Brooklyn Bridge, 72 N. Y. 527; Waterloo Woolen Manufacturing Co. v. Shanahan, 128 N. Y. 345, 28 N. E. 358, 14 L. R. A. 481.

20. See infra, § 90.

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reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money." [21]

§ 35. Submission of laws to popular vote.— Under the republican form of government in force in this state, the law-making power is vested in the legislature, and not directly in the entire body of the people.[22] Thus, in a comparatively early case,[23] it was held that the act of 1849 for the establishment of free schools was unconstitutional, because the legislature submitted to popular vote the question whether the enactment should become a law. But the later cases have limited this doctrine to the situation involved in that case, and it is held that the legislature may submit to the voters of a county or other municipal division the question whether a certain law shall be *operative* in such division.[24] For example, whether a municipal corporation shall be bonded in aid of the construction of a railroad may be made contingent on the consent of a certain percentage of the taxpayers of such municipality.[25] And, similarly, the question whether liquor licenses shall be issued in a certain district, may be legally delegated to the electors of such district.[26] So, too, the location of a county seat may be submitted to the voters of a county.[27] Likewise, the voters of a proposed county may be permitted to determine whether an act erecting such county shall go into effect.[28] While the line of distinction between delegating to the electors the right to determine whether an enactment shall become a law and delegating to them the right to decide whether a law shall become

21. See the Annotated Constitution in this work, Art. IV, § 9.

22. See supra, § 30.

23. Barto v. Hinrod, 8 N. Y. 483. Lower courts also held the Free School Act of 1849 to be unconstitutional on the ground that it delegated the law-making power to the People. Bradley v. Baxter, 15 Barb. 122, 8 How. Pr. 18; Holly v. Bengen, 3 Code. Rep. 193.

24. Bank of Rome v. Village of Rome, 18 N. Y. 38; People ex rel. Unger v. Kennedy, 207 N. Y. 533, 101 N. E. 442, 1914C Ann. Cas. 616.

25. Bank of Rome v. Village of Rome. 18 N. Y. 38; Starin v. Town of Genoa, 23 N. Y. 439; Clarke v. City of Rochester, 28 N. Y. 605.

26. Village of Gloversville v. Howell, 70 N. Y. 287.

27. Stanton v. Board of Supervisors of Essex County, 191 N. Y. 428, 84 N. E. 380.

28. People ex rel. Unger v. Kennedy, 207 N. Y. 533, 101 N. E. 442, 1914C Ann. Cas. 616.

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operative, may at times be a narrow one, it is one which is distinctly recognized.[29] And there is nothing in the Constitution which prohibits the legislature from passing a conditional statute to take effect upon a certain contingency, where the contingency is other than the submission to the voters of the question whether the act shall become a law.[30] The defect in an enactment which permits the voters to determine whether it shall become a law, may be cured by a subsequent act providing that the enactment shall go into effect at a certain time.[31] The approval by the people of an act not required by the fundamental law to be submitted to them cannot be construed to be an amendment of the Constitution, for that can be changed only by the methods provided for therein; nor can it be held to deprive the legislature of its power to alter or amend the act at its pleasure.[32]

§ 36. **Acceptance by cities of special city laws.**—A further detail in the procedure for the enactment of statutes is required in the case of special city bills. Such bills are required to be submitted to the cities affected thereby for acceptance.[33] The legislature may pass the bill and send it to the governor for executive approval, though it is not accepted by the city authorities, but such action must be taken in accordance with the constitutional provisions. A general law affecting all cities of a certain class, such as the Second Class Cities Law, is not within the provisions of the Constitution and need not be transmitted to the several cities affected thereby for their acceptance.[34]

§ 37. **Adoption of English and Colonial statutes.**— On the settlement of a new territory by a colony from another country, especially where the colonists continue subject to the same government, they carry with them such general laws of the mother country as are applicable to the situation of the colonists in the new territory, which laws thus become the laws of the colony until they are altered by constitutional or legislative enactment.[35] This rule is affirmed by the state constitution which continues as the

29. People ex rel. Unger v. Kennedy, 207 N. Y. 533, 101 N. E. 442, 1914C Ann. Cas. 616.

30. See infra, § 43, as to conditional statutes.

31. People ex rel. M'Spedon v. Stout, 23 Barb. 349, 13 How. Pr. 314.

32. People ex rel. Swift v. Luce, 74 Misc. 551, 133 N. Y. Supp. 9, affirmed 148 App. Div. 933, 132 N. Y Supp. 1143, affirmed 204 N. Y. 478, 97 N. E. 850, 1913C Ann. Cas. 1151.

33. See the Annotated Constitution in this work, Art. XII, § 2.

34. Koster v. Coyne, 184 N. Y. 494, 77 N. E. 983.

35. Bogardus v. Trinity Church, 4 Paige 178.

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law of this state such parts of the common law and of the acts of the legislature of the colony of New York as together did form the law of said colony on April 19, 1775, and the resolutions of the congress of said colony in force April 20, 1777, which have not expired or been repealed or altered, subject to such changes as the legislature shall make concerning the same.[36] But the practical effect of the constitutional provision is to continue in force only the common-law rules which have not been abrogated.[37] The legislature has enacted that the statutes of England and Great Britain shall not be deemed to have any force or effect in this State since May 1, 1778;[38] that the acts of the legislature of the colony of New York shall not be deemed to have any force or effect since December 29, 1828;[39] and that the resolutions of the congress of the colony of New York and of the convention of the state of New York shall not be deemed to be the laws of this state.[40]

III. Title of Statutes

§ 38. In general.— Every statute is required to have an enacting clause, the language of which is prescribed by the Constitution.[41] And a private or local act is required to have a title which substantially expresses the subject of the act.[42] But a public act of general application requires no title.[43] Thus, statutory provisions of a public and general nature may be inserted in an act

36. See the Annotated Constitution in this work, Art. I, § 16. "The colonial statutes had the force of laws, without the approval of the home government, and until they were annulled or disapproved. According to the uniform tenor of the royal charters and instructions, the power of assenting to or withholding assent from colonial statutes, was conferred on the governors; after being enacted by the provincial legislature, and approved by the governor, they were to be transmitted to the home government for examination, with the proviso, however, that all such laws should be valid and binding, until disapproved and rejected by the crown." People v. Trinity Church, 22 N. Y. 44.

37. "The common law of the mother country as modified by positive enactments, together with the statute laws which are in force at the time of the emigration of the colonists, became in fact the common law rather than the common and statute law of the colony. The statute law of the mother country, therefore, when introduced into the colony of New York, by common consent, because it was applicable to the colonists in their new situation, and not by legislative enactment, became a part of the common law of this province." Bogardus v. Trinity Church, 4 Paige 178.

38. General Construction Law, § 70.

39. General Construction Law, § 71.

40. General Construction Law, § 72.

41. See the Annotated Constitution in this work, Art. III, § 14.

42. See infra, § 39.

43. Ferguson v. Ross, 126 N. Y. 459, 27 N. E. 954; People ex rel. Central Trust Co. v. Prendergast, 202 N. Y. 188, 95 N. E. 715: Burnham v. Acton, 7 Robt. 395.

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containing local or private provisions, and the former will be valid though the latter are not.[44]

§ 39. Title of private and local bills.— While the title of a public statute of general application is of slight importance,[45] extreme care must be taken in the preparation of the title of a private or local bill. The Constitution provides that "no private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title."[46] The object of the requirement is that the members of the legislature and the public may be informed by the title of the general nature of the provisions proposed to be enacted.[47] Its object is also to prevent "log-rolling" and to require the announcement of the subject and prevent the fraudulent insertion of provisions upon subjects foreign to that indicated in the title.[48] It is not necessary that the title be the best that could be selected or exact and precise in all respects.[49] It is generally sufficient if it sets forth substantially the general purpose of the bill so as to apprise the public of the interests affected thereby.[50] The degree of particularity or the manner in which the title shall express the subject is not prescribed by the Constitution, but rests in the discretion of the legislature.[51] The title need not specify all the details of the object or purpose to be accomplished; the subject of the law, not an abstract of its contents, is the requirement of the Constitution.[52]

44. Richards v. Richards, 76 N. Y. 186; Ferguson v. Ross, 126 N. Y. 459, 27 N. E. 954.

45. See supra, § 38.

46. See the Annotated Constitution in this work, Art. III, § 16.

47. See the Annotated Constitution in this work, Art. III, § 16.

48. Conner v. City of New York, 5 N. Y. 285; People ex rel. City of Rochester v. Briggs, 50 N. Y. 553; People ex rel. Burroughs v. Brinkerhoff, 68 N. Y. 259; Gubner v. McClellan, 130 App. Div. 716, 115 N. Y. Supp. 755. See also the Annotated Constitution in this work, Art. III, § 16.

49. People v. Briggs, 50 N. Y. 553; Kerrigan v. Force, 68 N. Y. 381; Matter of New York & Brooklyn Bridge, 72 N. Y. 527; Matter of Department of Public Parks, 86 N. Y. 437; People ex rel. Devery v. Coler, 173 N. Y. 103, 65 N. E. 956; People ex rel. Corscadden v. Howe, 177 N. Y. 499, 69 N. E. 1114, 66 L. R. A. 664; City of Elmira v. Seymour, 111 App. Div. 199, 97 N. Y. Supp. 623; Neuendorff v. Duryea, 52 How. Pr. 267.

50. Matter of New York & Brooklyn Bridge, 72 N. Y. 527; Matter of Department of Public Parks, 86 N. Y. 437; People ex rel. Devery v. Coler, 173 N. Y. 103, 65 N. E. 956; People ex rel. Corscadden v. Howe, 177 N. Y. 499, 69 N. E. 1114, 66 L. R. A. 664; City of Elmira v. Seymour, 111 App. Div. 199, 97 N. Y. Supp. 623; Neuendorff v. Duryea, 52 How. Pr. 267.

51. Sun Mutual Insurance Co. v City of New York, 8 N. Y. 241; Brewster v. City of Syracuse, 19 N. Y. 116; People ex rel. City of Rochester v. Briggs, 50 N. Y. 553; People ex rel. Com'rs of Washington Park v. Banks, 67 N. Y. 568; Johnston v. Spicer, 107 N. Y. 185, 13 N. E. 753

52. Brewster v. City of Syracuse, 19 N. Y. 116; People ex rel. Crowell v. Lawrence, 41 N. Y. 137; People ex rel. Davies v. Commissioners of Taxes of New York, 47 N. Y. 501; Matter of Mayor, 50 N. Y. 504; Mat

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The most valuable test of a title, and the one which usually is employed, is the inquiry whether the title was so framed as to be deceptive or misleading, and consummated the evil at which the constitutional prohibition was aimed. Where one reading a proposed bill with the title in his mind comes upon provisions which are not germane to or connected with the title, and which he could not have reasonably anticipated, and which are so mingled together that both citizen and legislator are misled and thrown off their guard, it is the duty of the courts to declare the invalidity of the enactment.[53]

IV. When Statutes Take Effect

§ 40. Time not prescribed.—According to the usual acceptation of language, the date not upon which an act is "deemed to have been enacted," but the date upon which it takes effect, is the time when it becomes operative, and after which its provisions must be obeyed.[54] At common law, every act takes effect immediately upon its enactment, unless the act contains some clause prescribing a different time for that purpose.[55] But in this state the common-law rule has been abrogated by statute. For many years a general statute has provided that every law, unless a different time shall be prescribed therein, shall take effect on the twentieth day after it shall have become a law.[56] A different time is prescribed where it is stated in the act that it shall go into effect immediately. This does not mean immediately after the expiration of the twenty-day period, but immediately after its enactment.[57] But, if the statute provides merely that after the passage of the act it shall have a certain application, no time for its effect is prescribed and the statute does not take effect until the twentieth day after it becomes a law.[58]

§ 41. Time prescribed.— The legislature has full power to prescribe that an act shall go into effect immediately upon its enact-

ter of Van Antwerp, 56 N. Y. 261; Neuendorff v. Duryea, 69 N. Y. 557.

53. Coxe v. State, 144 N. Y. 396, 39 N. E. 400; Economic Power & Constr. Co. v. City of Buffalo, 195 N. Y. 286, 88 N. E. 389; Rogers v. Union R. Co., 10 Misc. 57, 30 N. Y. Supp. 855; People ex rel. Squires v. Hand, 135 N. Y. Supp. 192. See for a full discussion of this subject the Annotated Constitution in this work, Art. III, § 16.

54. McLaughlin v. Page, 14 Daly 274.

55. Real v. People, 42 N. Y. 270.

56. Legislative Law, § 43; Krom v. Levy, 60 N. Y. 126; Matter of Howe, 112 N. Y. 100, 19 N. E. 513, 2 L. R. A. 825.

57. Fairchild v. Gwynne, 14 Abb. Pr. 121, reversed 16 Abb. Pr. 23.

58. Matter of Howe, 48 Hun 235, affirmed 112 N. Y. 100, 19 N. E. 513, 2 L. R. A. 825.

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ment, or it may fix some definite future time for that event. There is no objection to a law which goes into effect on some holiday or on Sunday, for the legislature has full power to regulate what shall and what shall not be done on such days.[59] Frequently statutes contain a clause stating that they shall go into effect "immediately." This means immediately after the passage of the act; or, if the act meets executive approval, immediately after the act is signed by the governor.[60] An act which goes into effect immediately and exempts certain property from taxation will apply to taxes levied the year of the passage of the act, if the assessment of the taxes has not been completed at the time of the enactment of the law;[61] but, if the assessment has been completed at the time the act goes into effect and the act contains no provision giving it a retroactive effect, the taxpayer does not receive relief until the following year.[62] Certain parts of an act may take effect at one time, while other parts will become operative at an earlier or later time.[63] By express provision, the legislature may enact that a certain statute, though going into effect generally at a certain time, shall be construed with reference to other statutes as if it went into effect at an earlier date.[64] But an attempt to have an act construed as of a later date than its enactment cannot have much weight in the construction of later statutes, either those passed by a later legislature or by the same body, for the legislature cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes.[65]

§ 42. Consideration of fraction of day.— The general rule that the law will not take notice of parts of a day is applied to the time that statutes go into operation, and a statute which by its terms goes into effect immediately, in the absence of evidence as to the time of its approval, is deemed to have been in force the entire day of its signing by the governor.[66] In this respect the

59. Bloomingdale v. Seligman, 22 Abb. N. C. 98, 3 N. Y. Supp. 243.

60. Matter of Kemeys, 56 Hun 117, 9 N. Y. Supp. 182; Fairchild v. Gwynne, 14 Abb. Pr. 121, reversed 16 Abb. Pr. 23.

61 People ex rel. American Bible Society v. Commissioners of Taxes of the City of New York, 142 N. Y. 348, 37 N. E. 116.

62. Aetna Ins. Co. v. City of New York, 153 N. Y. 331, 47 N. E. 593; Matter of American Fine Arts Society, 6 App. Div. 496, 39 N. Y. Supp. 564, affirmed on opinion below 151 N. Y. 621, 45 N. E. 1131.

63. Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652.

64. People v. Jaehne, 103 N. Y. 182, 8 N. E. 374.

65. People ex rel. Ellett v. O'Grady, 46 App. Div. 213, 61 N. Y. Supp. 577.

66. Croveno v. Atlantic Ave. R. Co., 150 N. Y. 225, 44 N. E. 968;

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rule of the state courts is similar to that which the federal courts have enforced with reference to federal statutes.[67] But the general rule allows the exception that in order to avoid injustice fractions of a day may be considered; and, hence, whenever in the ascertainment of the rights and obligations of parties the question as to when an act took effect becomes material, the courts may receive evidence and inquire into the precise time.[68] Thus, the effect of an inheritance tax law may be avoided by showing that the decedent died before the governor signed the bill, though his death was on the same day.[69] In the absence of a record of the precise time at which an act of the legislature was approved by the governor, the courts may inquire of those who in the performance of their public duties were present on the occasion of such approval, and receive their statements as an aid in determining this question.[70] An act may expressly state the precise minute when it shall go into effect, or it may contain language which will indicate a legislative intention as to the precise time. For example, a statute relative to the city of New York provided that it should go into effect on January 1, 1885, and another statute then in force provided that the term of office of the mayor of the city should commence at noon on that day; in connection with other circumstances, it was held that it was the legislative intent that the statute in question should go into effect *at noon* on January first.[71]

§ 43. **Conditional statutes.**—Although the legislature cannot submit to popular vote the question whether an enactment shall become a law,[72] a statute may be enacted in such form that it shall have no effect until the happening of some other future event, either certain or uncertain.[73] To illustrate, the effect of sections of a statute authorizing a city to subscribe to the stock

Douglass v. Seiferd, 18 Misc. 188, 41 N. Y. Supp. 289; People ex rel. Taylor v. Welde, 28 Misc. 582, 59 N. Y. Supp. 1030. But see Matter of Foley, 8 Misc. 57, 28 N. Y. Supp. 608, to the effect that the entire day of approval is to be excluded.

67. U. S. v. Norton, 97 U. S. 164; Lapeyre v. U. S., 17 Wall. (U. S.) 191; Arnold v. U. S., 9 Cranch (U. S.) 104; In re Welman, 29 Fed. Cas. No. 17,407; In re Carrier, 13 Nat. Bankr. Reg. 208, 5 Fed. Cas. No. 2,443; Ledigh Carriage Co. v. Stengel, (C. C. A.) 95 Fed. Rep. 640; In re Williams, 6 Biss. (U. S.) 233; Matter of Howes, 21 Vt. 619, 12 Fed. Cas. No. 788.

68. Ottman & Co. v. Hoffman, 7 Misc. 714, 28 N. Y. Supp. 28, 58 N. Y. St. Rep. 320.

69. Matter of Dreyfous, 28 Abb. N. C. 27, 18 N. Y. Supp. 767.

70. Ottman v. Hoffman, 7 Misc. 714, 28 N. Y. Supp. 28, 58 N. Y. St. Rep. 320.

71. People ex rel. Wood v. Lacombe, 99 N. Y. 43, 1 N. E. 599.

72. See supra, § 35.

73. Barto v. Himrod, 8 N. Y. 483,

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of a private corporation may be made dependent on the approval of such corporation.[74] And the legislature may provide that an act affecting the interests of a certain municipality shall be void unless such municipality files its written consent thereto within a prescribed time.[75] So, too, the legislature may prohibit foreign fire insurance companies from doing business in this state except upon terms equal to those imposed by the state of their origin upon companies of this state seeking to do business there.[76]

V. Evidence of Statutes

§ 44. Evidence of passage of bill.— Upon the passage of a bill or concurrent resolution by either house, the presiding officer thereof is required by statute to append to such bill or resolution a certificate of the date of its passage by the votes of a majority of all the members elected to such house or in the presence of three-fifths of such members, if such be the case, or by the votes of two-thirds of all the members elected to such house, as the case may be.[77] The statute provides further that no bills shall be deemed to have been so passed unless certified by the presiding officer, which certificate to such effect shall be conclusive evidence thereof.[78] In the publication of the statutes, it is required that there be inserted under the title of each act a statement to the effect that it became a law upon the properly specified date, with or without the approval of the governor, or notwithstanding his objections, as the case may be, and adding the words "passed by a two-thirds vote," "passed, three-fifths being present," or "passed, a majority being present," in accordance with the certificates appended to the original bill. Such statement is presumptive evidence that the original bill was certified by the presiding officer of each house accordingly.[79] If a bill requires a two-thirds vote for its passage and the printed volume or the original act

Bradley v. Baxter, 15 Barb. 122, 8 How. Pr. 18; Corning v. Greene, 23 Barb. 33, affirmed 26 N. Y. 472.

74. Clarke v. City of Rochester, 24 Barb. 446, affirmed 28 N. Y. 605.

75. Corning v. Greene, 23 Barb. 33, affirmed 26 N. Y. 472.

76. People v. Fire Association of Philadelphia, 92 N. Y. 311, affirmed 119 U. S. 110, 7 S. Ct. 108, 30 L. ed. 342.

77. Legislative Law, § 40. After the adjournment of the houses, it has been held that the presiding officer has no power to file amended certificates correcting errors in the original certificate, and such amended certificates are not evidence. Matter of Stickney, 110 App. Div. 294, 97 N. Y. Supp. 336, affirmed 185 N. Y. 107, 77 N. E. 993. But in an earlier case, amended certificates were received. Matter of Weeks, 109 App. Div. 859, 96 N. Y. Supp. 876, affirmed 185 N. Y. 541, 77 N. E. 1197.

78. Legislative Law, § 40.

79. Legislative Law, § 44

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does not show that it received such vote, presumptively the act is inoperative and void.[80] However, if the bill requires a two-thirds vote for its passage, the statement in the session laws that it was so passed is presumptive evidence of such fact; but this presumption may be overcome by the production of the original certificate showing that it was not so passed.[81] Even if the certificate is defective or insufficient and does not show that the bill received the necessary vote, or that the necessary number was present, the presumption created by the statement in the session laws is not overcome.[82] In such case, it is proper to resort to the journal of the house for the purpose of determining the presence of a quorum or the vote on the passage of the act.[83] But, if the certificate of the presiding officer is in due form, the statute makes it conclusive evidence and it cannot be impeached.[84] Outside of the statutory provisions on the subject, an act contained in the session laws is presumed to have been passed in the mode prescribed by the Constitution;[85] and the burden is on one asserting the contrary to set up his claim in his pleadings and produce evidence to overcome the presumption of regularity.[86]

§ 45. Evidence of when bill becomes a law.— The statute prescribes written evidence of the time when a bill becomes a law. The Legislative Law [87] provides: "If a bill becomes a law by the approval of the governor, the certificate of the governor shall be evidence of the time when the bill becomes a law. If a bill

80. People ex rel. Purdy v. Highway Commissioners of the Town of Marlborough, 54 N. Y. 276.

81. People ex rel. Purdy v. Highway Commissioners of the Town of Marlborough, 54 N. Y. 276; Rumsey v. New York, etc., R. Co., 130 N. Y. 88, 28 N. E. 763; Purdy v. People, 4 Hill 384.

82. Rumsey v. New York, etc., R. Co., 130 N. Y. 88, 28 N. E. 763.

83. Rumsey v. New York, etc., R. Co., 130 N. Y. 88, 28 N. E. 763; Matter of Stickney, 185 N. Y. 107, 77 N. E. 993; Matter of Weeks, 109 App. Div. 859, 96 N. Y. Supp. 876, affirmed without opinion, 185 N. Y. 541, 77 N. E. 1197; Matter of Stickney, 110 App. Div. 294, 97 N. Y. Supp. 336, affirmed 185 N. Y. 107, 77 N. E. 993; Purdy v. People, 4 Hill 384.

84. People v. Devlin, 33 N. Y. 269; Rumsey v. New York, etc., R. Co, 130 N. Y. 88, 28 N. E. 763; New York & Long Island Bridge Co. v. Smith, 148 N. Y. 540, 42 N. E. 1088; Helm v. Day, 134 N. Y. Supp. 770.

85. People ex rel. Scott v. Supervisors of Chenango County, 8 N. Y. 317; McGrath v. Grout, 69 App. Div. 314, 74 N. Y. Supp. 782, affirmed 171 N. Y. 7, 63 N. E. 547; McGrath v Grout, 37 Misc. 64, 74 N. Y. Supp 779, affirmed 171 N. Y. 7, 63 N. E 547; Matter of Taxpayers of Town of Kingston, 40 How. Pr. 444; Pumpelly v. Village of Owego, 45 How. Pr. 219.

86. People ex rel. Scott v. Supervisors of Chenango County, 8 N. Y. 317; Wolfe v. Richmond County Sup'rs, 11 Abb. Pr. 270, 19 How. Pr. 370; Matter of Taxpayers of Town of Kingston, 40 How. Pr. 444; Pumpelly v. Village of Owego, 45 How. Pr. 219; Darlington v. City of New York, 2 Robt. 274, affirmed 31 N. Y. 164.

87. § 41.

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becomes a law by the failure of the governor to sign it or to return it to the house where it originated without his approval within the time required by the Constitution, the certificate of the secretary of state of the time when it was filed in his office shall be evidence of the time when it became a law."

§ 46. Evidence of taking effect of act.— When the time that a bill became a law has been determined,[88] the time that it goes into effect is easily determined from its language. If it does not prescribe a different time when it shall go into effect, the law makes it take effect on the twentieth day after it became a law.[89] The judicial notice which the courts take of public statutes of this state,[90] extends to the time when they go into operation.[91] As between two statutes enacted on the same day, in the absence of evidence to the contrary, priority may be inferred from their numbers, the one bearing the earlier number being deemed the first to have been enacted.[92]

§ 47. Proof of domestic laws.— The courts of this state will take judicial notice of its public statutes.[93] If the act is one which can be classed as public, it is not material whether it is general or local; though applicable to a limited district of the state, it comes within the judicial knowledge of the courts.[94] Thus, judicial notice will be taken of the provisions of a city charter.[95] But the courts do not take notice of private acts; a

88. See supra, § 45.

89. See supra, § 40.

90. See infra, § 47.

91. Ottman v. Hoffman, 7 Misc. 714, 28 N. Y. Supp. 28, 58 N. Y. St. Rep. 320.

92. Ottman v. Hoffman, 7 Misc. 714, 28 N. Y. Supp. 28, 58 N. Y. St. Rep. 320; Metropolitan Board of Health v. Schmades, 10 Abb. Pr. (N. S.) 205, 3 Daly 282.

93. Shaw v. Tobias, 3 N. Y. 188; Barto v. Himrod, 8 N. Y. 483; Board of Water Commissioners of the Village of Clinton v. Dwight, 101 N. Y. 9, 3 N. E. 782; Matter of Mohawk River Bridge, 128 App. Div. 54, 112 N. Y. Supp. 428; People v. Tillman, 139 App. Div. 572, 124 N. Y. Supp. 44, affirmed on opinion below, 201 N. Y. 598, 95 N. E. 1136; Van Tuyl v. New York Real Estate, etc., Co., 153 App. Div. 409, 138 N. Y. Supp. 541, affirmed 207 N. Y. 691, 101 N. E. 1096; Mosher v. City of Elmira, 83 Misc. 328, 145 N. Y. Supp. 964; Schradin v. New York Cent., etc., R. Co., 103 N. Y. Supp. 73, affirmed 124 App. Div. 705, 104 N. Y. Supp. 428, affirmed, 194 N. Y. 534, 87 N. E. 1126; Browne v. Scofield, 8 Barb. 239; People v. Herkimer, 4 Cow. 345; Bretz v. Mayor, etc., of N. Y., 4 Abb. Pr. (N. S.) 258, 6 Rob. 325, 35 How. Pr. 130; Jenkins v. Union Turnpike Road, 1 Caines Cas. 86; Bogardus v. Trinity Church, 4 Paige 178; McHarg v. Eastman, 7 Robt. 137.

94. Board of Water Com'rs of Village of Clinton v. Dwight, 101 N. Y. 9, 3 N. E. 782; People v. Tillman, 139 App. Div. 572, 124 N. Y. Supp. 44, affirmed on opinion below, 201 N. Y. 598, 93 N. E. 1136; Mosher v. Elmira, 83 Misc. 328, 145 N. Y. Supp. 964; Bretz v. City of New York, 4 Abb. Pr. (N. S.) 258, 6 Rob. 325, 35 How. Pr. 130. As to the distinction between general and local acts, see supra, § 1.

95. People v. Tillman, 139 App Div. 572, 124 N. Y. Supp. 44, affirmed

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party relying on such an act must prove the same.[96] And the courts will not take judicial notice of the acts or resolutions of inferior boards or bodies, such as city or village ordinances,[97] or regulations of the canal board,[98] or church laws, rule or canons.[99] If necessary or advisable, "a statute or joint resolution, passed by the legislature of the state, may be read in evidence from a newspaper, designated as prescribed by law, to publish the same, until six months after the close of the session at which it was passed; and, at any time, from a volume printed under the direction of the secretary of state. To entitle any copy of a law published, other than those published under the direction of the secretary of state, to be read in evidence, there shall be contained in the same book or pamphlet, a printed certificate of the secretary of state, that such copy is a correct transcript of the text of the original laws. For such certificate the secretary of state shall collect such a fee as he shall deem just and reasonable." [1]

§ 48. Proof of laws of another state or country.— The general rule is, that the courts of one country are presumed to be acquainted with their own laws only; those of other countries are to be averred and proved like other facts of which courts do not take judicial notice.[2] Thus, when the law of a foreign country is material to an issue at trial in the courts of this state, it must be proved as a fact.[3] And the general rule is applied, not only to

on opinion below 201 N. Y. 598, 93 N. E. 1136 (New York); Mosher v. Elmira, 83 Misc. 328, 145 N. Y. Supp. 961 (Elmira).

96. Jenkins v. Union Turnpike Road, 1 Caines Cas. 86. As to the distinction between public and private acts, see supra, § 2.

97. Porter v. Waring, 69 N. Y. 250; People v. Cronin, 91 Misc. 342, 154 N. Y. Supp. 446. An act, ordinance, resolution, by-law, rule or proceeding of the common council of a city, or of the board of trustees of an incorporated village, or of a board of health of a city, town or incorporated village or of a board of supervisors, within the state, may be read in evidence, either from a copy thereof, certified by the city clerk, village clerk, clerk of the common council, clerk or secretary of the local board of health, or clerk of the board of supervisors; or from a volume printed by authority of the common council of the city, or the board of trustees of the village or the local board of health of the city, town or village, or the board of supervisors. Code Civ. Pro., § 941.

98. Palmer v. Aldridge, 16 Barb. 131.

99. Youngs v. Ransom, 31 Barb. 49.

1. Code Civ. Pro. § 932. A statute contained in the compilation of the colonial statutes transmitted to the legislature by the commissioners of statutory revision, pursuant to chapter 125 of the Laws of 1891, is evidence in any action or proceeding, and of the same force and effect as though the original was produced, if it appears from such publication that such statute was copied from the original. Code Civ. Pro. § 941a.

2. Monroe v. Douglass, 5 N. Y. 447.

3. Whitford v. The Panama R. Co., 23 N. Y. 465; Schweitzer v. Hamburg American Line, 149 App. Div. 900, 134 N. Y. Supp. 812; Douglass v. Douglass, 70 Misc. 412, 128 N. Y. Supp. 912; Oehler v. Hamburg American Line, 84 Misc. 272, 145 N. Y. Supp. 1090; Orr v. Baltimore & O. R.

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the law of foreign countries, but also to the law of another state.[4] The laws of other states are facts which must be alleged and proved, the same as other facts.[5] The unwritten law of another state which inherited the common-law system, in the absence of evidence, is presumed to be the same as the unwritten law of this state;[6] but there is no presumption of similarity between the statutes of this state and those of another common-law state; a statute of another state, whether public or private, must be proved.[7] As to those states and foreign countries which never adopted the common law, there is no presumption that their

Co., 168 App. Div. 548, 153 N. Y. Supp. 920; Matter of Diez, 56 Barb. 591; Randall v. Van Rensselaer, 1 Johns. 95; Kenny v. Clarkson, 1 Johns. 385; Lincoln v. Battelle, 6 Wend. 475.

4. Southworth v. Morgan, 205 N. Y. 293, 98 N. E. 490; Electric Fireproofing Co. v. Smith, 113 App. Div. 615, 99 N. Y. Supp. 37; Swing v. Wanamaker, 139 App. Div. 627, 124 N. Y. Supp. 231; Orr v. Baltimore & Ohio R. Co., 168 App. Div. 548, 153 N. Y. Supp. 920; Albera v. Sciaretti, 72 Misc. 496, 131 N. Y. Supp. 889; Duryee v. Sunlight Gas, etc., Co., 74 Misc. 440, 132 N. Y. Supp. 407; Savings Assoc. of St. Louis v. O'Brien, 51 Hun 45, 3 N. Y. Supp. 764, 20 N. Y. St. Rep. 826; Vanderwerken v. New York & N. H. R. Co., 6 Abb. Pr. 239; Leavenworth v. Brockway, 2 Hill 201; Holmes v. Broughton, 10 Wend. 75. And the courts and citizens of other States are not charged with a knowledge of our laws. Merchants Bank of New York v. Spalding, 9 N. Y. 53. "What the foreign law is, is, therefore, a question of fact unless it invokes the construction of a written statute or judicial opinion, when it may be a question of law, * * * but even then the contents of the statute or the opinion must be introduced in evidence before the trial court." Schweitzer v. Hamburg American Line, 149 App. Div. 900, 134 N. Y. Supp. 812. And see Geoghegan v. Atlas S. S. Co., 16 Daly 229, 10 N. Y. Supp. 121.

5. Leonard v. Columbia Steam Navigation Co., 84 N. Y. 48; Southworth v. Morgan, 205 N. Y. 293, 98 N. E. 490; Electric Fireproofing Co. v. Smith, 113 App. Div. 615, 99 N. Y. Supp. 37; Savings Assoc. of St. Louis v. O'Brien, 51 Hun 45, 3 N. Y. Supp. 764, 20 N. Y. St. Rep. 826. If not alleged, the laws of another State cannot generally be proved. Peterson v. Fowler, 162 App. Div. 21, 147 N. Y. Supp. 280.

6. Whitford v. Panama R. Co., 23 N. Y. 465; Harris v. White, 81 N. Y. 532; Southworth v. Morgan, 205 N. Y. 293, 98 N. E. 490; Pomeroy v. Ainsworth, 22 Barb. 118; Abell v. Douglass, 4 Denio 305. "Having once been a part of the British empire, we take judicial notice that the common law was in force within her dominions at the time of our separation. And we presume, also, that that law remains unchanged, in the absence of proof to the contrary." Stokes v. Macken, 62 Barb. 145.

7. Whitford v. The Panama R. Co., 23 N. Y. 465; Harris v. White, 81 N. Y. 532; Leonard v. Columbia Steam Navigation Co., 84 N. Y. 48; Moore v. Hegeman, 92 N. Y. 521; Doolittle v. Selkirk, 7 Misc. 722, 28 N. Y. Supp. 43, 58 N. Y. St. Rep. 328; Pomeroy v. Ainsworth, 22 Barb. 118; Wright v. Delafield, 23 Barb. 498; Bradley v. Mutual Benefit Life Ins. Co., 3 Lans 341, reversed 45 N. Y. 422; Holmes v. Broughton, 10 Wend. 75. "Where the condition of the law of another state becomes material, and no evidence has been offered concerning it, our courts will presume that the general principles of the common law, which we always consider to be consonant to reason and natural justice, prevail there. But no such presumption obtains respecting the positive statute law of the state. There is, generally, no probability, in point of fact, and there is never any presumption of law, that other states or countries have established, precisely or substantially, the same arbitrary rules which the domestic legislature has seen fit to enact." Whitford v. Panama R. Co., 23 N. Y. 465.

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unwritten law is similar to our common-law rules.[8] The Code of Civil Procedure provides for the proof of foreign laws as follows: "A printed copy of a statute, or other written law, of another state, or of a territory, or of a foreign country, or a printed copy of a proclamation, edict, decree, or ordinance, by the executive power thereof, contained in a book or publication, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted, as evidence of the existing law, in the judicial tribunals thereof, is presumptive evidence of the statute, law, proclamation, edict, decree, or ordinance. The unwritten or common law of another state, or of a territory, or of a foreign country, may be proved, as a fact, by oral evidence. The books of reports of cases, adjudged in the courts thereof, must also be admitted, as presumptive evidence of the unwritten or common law thereof." [9] It has been held that the statute law of a foreign state cannot be proved by parol evidence.[10] And, where the evidence of a foreign law consists entirely of a written document, statute or judicial opinion, the question of its construction and effect is for the court to determine, and evidence of a lawyer of another state or country as to what, in the opinion of lawyers there, should be the construction of a statute of that state or country, is not admissible where the language is plain and there is no decision of the courts of that state or country upon the points in controversy.[11]

§ 49. Proof of federal statutes.—As a general proposition, the federal courts take judicial notice of the public laws of every state in the Union.[12] And, on the other hand, the state courts

8. Savage v. O'Neil, 44 N. Y. 298; Schweitzer v. Hamburg American Line, 149 App. Div. 900, 134 N. Y. Supp. 812.

9. § 942.

10. Toulandou v. Lachenmeyer, 6 Abb. Pr. (N. S.) 215, 37 How. Pr. 145.

11. Geoghegan v. Atlas S. S. Co., 16 Daly 229, 10 N. Y. Supp. 121.

12. Gormley v. Bunyan, 138 U. S. 635; New York Fourth Nat. Bank v. Francklyn, 120 U. S. 751; Roberts v. Reilly, 116 U. S. 96; Mitchell v. Overman, 103 U. S. 64; Elwood v. Flannigan, 104 U. S. 568; Pennington v. Gibson, 16 How. (U. S.) 65; Cheever v. Wilson, 9 Wall. (U. S.) 121; Owings v. Hull, 9 Pet. (U. S.) 625; Mutual L. Ins. Co. v. Hill, (C. C. A.) 97 Fed. Rep. 269; Andruss v. People's Bldg., etc., Assoc., (C. C. A.) 94 Fed. Rep. 580; Barry v. Snowden, 106 Fed. Rep. 573; L'Engle v. Gates, 74 Fed. Rep. 513; Noonan v. Delaware, etc., R. Co., 68 Fed. Rep. 1; Hathaway v. Mutual L. Ins. Co., 99 Fed. Rep. 534; Knower v. Haines, 31 Fed. Rep. 514; Newberry v. Robinson, 36 Fed. Rep. 843; Merchants' Exch. Bank v. McGraw, (C. C. A.) 59 Fed. Rep. 977; Western, etc., R. Co. v. Roberson, (C. C. A.) 61 Fed. Rep. 594; Taylor v. Holmes, 14 Fed. Rep. 504; Bennett v. Bennett, Deady (U. S.) 309; Jasper v. Porter, 2 McLean (U. S.) 579; Gordon v. Hobart, 2 Sumn. (U. S.) 405; Pullan v. Cincinnati, etc., R. Co., 4 Biss. (U. S.) 41. See also Lloyd v. Matthews, 155 U. S. 227; Hanley v.

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take judicial notice, not only of the public acts of Congress,[13] but also of all treaties entered into between the federal government and foreign nations.[14] The courts will enforce a general statute of Congress without its formal proof, even if the point is not urged by counsel and is originated by the court.[15] A public act relating to the District of Columbia, such as a statute for the organization of its courts, need not be proved.[16]

§ 50. **Verity of recitals.**— The preamble to a public statute, though not conclusive evidence of the facts therein recited, is said to be admissible as evidence of such facts.[17] But private statutes stand on a different basis, and the recitals in such statutes are not admissible as evidence as against a party in no way connected with the act.[18] As an explanation of the reason for the doctrine, it has been said, "Once adopt the principle that such facts are conclusive, or even *prima facie* evidence against private rights, and many individual controversies may be prejudiced and drawn from the functions of the judiciary, into the vortex of legislative usurpation."[19] But, nevertheless, the facts recited in private statutes are considered competent evidence in an action in which the state, or a person for whose benefit the act is passed, is a party.[20]

VI. Construction and Interpretation of Statutes

General Rules of Construction and Interpretation

§ 51. **Object and utility of rules of interpretation.**— The imperfections of human language and the different modes of expression in use among different individuals render it practically

Donoghue, 116 U. S. 6; Chicago, etc., R. Co. v. Wiggins Ferry Co., 119 U. S. 615; Starr v. Moore, 3 McLean (U. S.) 354.

13. Case v. First National Bank of Brooklyn, 59 Misc. 269, 109 N. Y. Supp. 1110; Carlin v. New York, etc., R. Co., 71 Misc. 521, 130 N. Y. Supp. 828; O'Connell v. Press Pub. Co., 77 Misc. 3, 137 N. Y. Supp. 332, affirmed without opinion 151 App. Div. 926, 136 N. Y. Supp. 1142; Kessel v. Albetis, 56 Barb. 362.

14. Schweitzer v. Hamburg American Line, 149 App. Div. 900, 134 N. Y. Supp. 812.

15. Carlin v. New York, etc., R. Co., 71 Misc. 521, 130 N. Y. Supp. 828.

16. Milliken v. Dotson, 117 App. Div. 527, 102 N. Y. Supp. 564. But see Wright v. Paton, 10 Johns. 300, erroneously holding that an act of Congress for the relief of insolvent debtors in the District of Columbia was a private act, and that the New York courts would not take judicial notice of it.

17. McKinnon v. Bliss, 21 N. Y. 206.

18. McKinnon v. Bliss, 21 N. Y. 206; Parmelee v. Thompson, 7 Hill 77; Lee v. Porter, 5 Johns. Ch. 268.

19. McKinnon v. Bliss, 21 N. Y. 206.

20. Fox v. Fort Edward, 48 Hun 363, 1 N. Y. Supp. 81, affirmed 121 N. Y. 666, 24 N. E. 1093. See also

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impossible that the language of any general legislative provision, which is intended to govern future cases, can be made so certain and explicit as not to admit of a doubt as to its proper interpretation or legal construction, when it is afterwards to be applied to the peculiar circumstances of some particular case. For this reason it has been found necessary to establish a system of legal hermeneutics, or fixed principles of interpretation of legislative enactments, to ascertain the meaning and intent of the lawgiver.[21] The object of these is not to lay down inflexible principles which are obligatory on the courts when it is possible to apply them, but to render assistance in determining the legislative intent.[22] The legislative intent is the primary consideration in the construction of a statute,[23] and all canons of construction must give way to the ascertainment of such intention. Resort is had to the rules for the interpretation of statutes only when it is necessary to apply them to ascertain the meaning of a statute.[24] When the meaning of a statute is clear, construction is unnecessary; in such a case, the duty of the court is to carry out the expressed legislative intent, not to read a different intent into the law by the aid of canons of construction.[25] But, if the intent of the law-making body is not clear, and the construing power of the courts is therefore called into operation, they will be guided by the canons of interpretation, which long experience and the settled wisdom of the courts have uniformly approved.[26] As was said in an early case,[27] "Rules of construction make the law as well as the statutes; and lightly to depart from them without necessity, would be to incur the denunciations of Lord Hale himself, against precipitate and inconsiderate innovations in the law." The legislature is deemed to have had knowledge of the rules of construction when they

McKinnon v. Bliss, 21 N. Y. 206; Cocheu v. Methodist Protestant Church, 32 App. Div. 239, 52 N. Y. Supp. 1019.

21. Mayor, etc., of New York v. Lord, 18 Wend. 126, per Chancellor Walworth.

22. Dunham v. Sage, 52 N. Y. 229; Pierson v. People, 79 N. Y. 424; People ex rel. Twenty-third St. R. Co. v. Commissioners of Taxes of City of New York, 95 N. Y. 554; People v. Lovell, 21 Misc. 570, 48 N. Y. Supp. 879; People ex rel. McSpedon v. Stout, 23 Barb. 349, 13 How. Pr. 314; Weiler v. Newbach, 47 Hun 166, 13 Civ. Pro. R. 380, 13 N. Y. St. Rep. 451, 28 Week. Dig. 265, affirmed 114 N. Y. 36, 20 N. E. 623; Weiler v. Newbach, 47 Hun 166, affirmed as Weiler v. Newbach, 114 N. Y. 36, 20 N. E. 623.

23. See infra, § 52.

24. Beekman v. Third Ave. R. Co., 13 App. Div. 279, 43 N. Y. Supp. 174, affirmed 153 N. Y. 144, 47 N. E. 277.

25. See infra, §§ 55, 90.

26. Billings v. Baker, 28 Barb. 343; Canastota & Morrisville Plank Road Co. v. Parkill, 50 Barb. 601.

27. Douglass v. Howland, 24 Wend 35.

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enacted a statute; and, in the absence of anything to the contrary, the courts suppose that the legislature intended its acts to be interpreted in accordance with such rules.[28] These rules of interpretation are, in general, the same as are used in the construction of other formal written instruments, such as constitutions,[29] treaties,[30] municipal ordinances,[31] court rules,[32] and contracts.[33]

§ 52. Legislative intent the primary consideration.— In the interpretation of statutes the primary consideration of the courts

28. Beach v. Bay State Company, 6 Abb. Pr. 415, 27 Barb. 248, 16 How. Pr. 1, reversed 10 Abb. Pr. 71, 30 Barb. 433, 18 How. Pr. 335.

29. Mangam v. The City of Brooklyn, 98 N. Y. 585; People ex rel. Bockes v. Wemple, 115 N. Y. 302, 22 N. E. 272; Leach v. Auwell, 154 App. Div. 170, 138 N. Y. Supp. 975; People ex rel. Jackson v. Potter, 42 How. Pr. 260; Matter of Ford, 6 Lans. 92. "In construing the language of the Constitution as in construing the language of a statute, the courts should look for the intention of the people and give to the language used its ordinary meaning." Matter of Sherrill v. O'Brien, 188 N. Y. 185. "We are not to interpret the Constitution precisely as we would an act of the legislature. The convention was not obliged, like the legislative bodies, to look carefully to the preservation of vested rights; it was competent to deal, subject to ratification by the people, and to the Constitution of the federal government, with all private and social rights, and with all the existing laws and institutions of the state; if the convention had so willed, and the people had concurred, all former charters and grants might have been annihilated. When, therefore, we are seeking for the true construction of a constitutional provision, we are constantly to bear in mind, that its authors were not executing a delegated authority, limited by other constitutional restraints, but are to look upon them as the founders of a state, intent only on establishing such principles as seemed calculated to produce good government, and promote the public happiness, at the expense of all existing institutions which might stand in their way." Matter of Lee's Bank, 21 N. Y. 9.

30. Matter of Lobrasciano, 38 Misc. 415, 77 N. Y. Supp. 1040, wherein it was said: "It is true that in the interpretation of treaties, the same general rules are adopted which apply to the construction of statutes, contracts and written instruments generally, in order to effect the purpose and intention of the makers. * * * Nevertheless there is this difference, that the language of treaties in most instances, as it comes for interpretation or construction, is but a translation from a foreign tongue, and there would be great danger of violating the spirit of such an instrument were we to bear too heavily upon the local technical definition and use of a word."

31. Kennahan v. City of New York, 162 App. Div. 364, 147 N. Y. Supp. 835; Oswego v. Collins, 38 Hun 171; Mayor, etc., of N. Y. v. Third Ave. R. Co., 16 N. Y. St. Rep. 122, 1 N. Y. Supp. 397, affirmed 117 N. Y. 404, 22 N. E. 755. "The rule by which this ordinance is to be construed is such as applies to the interpretation of the acts of other legislative bodies, and is that which shall best effectuate the intent of its authors. The reason and object of an act are to be regarded to arrive at its meaning, and while it is not competent to interpret that which has no need of interpretation, or to deny to clear and precise terms the sense which they naturally present, yet when such terms lead to manifest injustice and involve an absurdity, law and equity both require us to give such an effect to the language used as will accomplish the obvious intent of the legislature." Duryee v. City of New York, 96 N. Y. 477.

32. Matter of Warde, 154 N. Y. 342, 48 N. E. 513.

33. McCluskey v. Cromwell, 11 N. Y. 593; Matter of New York & Brooklyn Bridge, 72 N. Y. 527; People ex rel. Mason v. McClave, 99 N. Y. 83; Chamberlain v. Western Transportation Co., 45 Barb. 218,

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is to ascertain and give effect to the intent of the legislature.[34] In other words, it is the duty of the courts to give statutes such interpretation as will carry out and effectuate to the fullest extent the

reversed 44 N. Y. 305; Mayor of New York v. Lord, 18 Wend. 126.

34. James v. Patten, 6 N. Y. 9; Burch v. Newbury, 10 N. Y. 374; McCluskey v. Cromwell, 11 N. Y. 593; People ex rel. Davies v. Cowles, 13 N. Y. 350; Chase v. New York Central Railroad Company, 26 N. Y. 523; Holmes v. Carley, 31 N. Y. 289; Matter of Episcopal Public School, 46 N. Y. 178; People ex rel. Jackson v. Potter, 47 N. Y. 375; Rosenplaenter v. Roessle, 54 N. Y. 262; People v. Gates, 56 N. Y. 387; Matter of Rochester Water Commissioners, 66 N. Y. 413; People ex rel. Collins v. Spicer, 99 N. Y. 225, 1 N. E. 680; People ex rel. Bockes v. Wemple, 115 N. Y. 302, 22 N. E. 272; Gilmore v. City of Utica, 121 N. Y. 561, 24 N. E. 1009; Hayden v. Pierce, 144 N. Y. 512, 39 N. E. 638; Matter of Rapid Transit R. Com'rs, 147 N. Y. 260, 41 N. E. 575; Matter of Sherrill v. O'Brien, 188 N. Y. 185, 81 N. E. 124; People ex rel. Lichtenstein v. Langen, 196 N. Y. 260, 89 N. E. 921, 17 Ann. Cas. 1081, 25 L. R. A. (N. S.) 479; Wiley v. Solvay Process Co., 215 N. Y. 584, 109 N. E. 606; People ex rel. Fitch v. Lord, 9 App. Div. 458, 41 N. Y. Supp. 343, 75 N. Y. St. Rep. 760; De Camp v. Thomson, 16 App. Div. 528, 44 N. Y. Supp. 1014, affirmed 159 N. Y. 444, 54 N. E. 11; Cocheu v. Methodist Protestant Church, 32 App. Div. 239, 52 N. Y. Supp. 1019; Josh v. Marshall, 33 App. Div. 77, 53 N. Y. Supp. 419; People v. Levoy, 72 App. Div. 55, 76 N. Y. Supp. 783; People ex rel. J. B. Lyon Co. v. McDonough, 76 App. Div. 257, 78 N. Y. Supp. 462, affirmed 173 N. Y. 181, 65 N. E. 963; New York Cent., etc., R. Co. v. Buffalo, etc., Elec. R. Co., 96 App. Div. 471, 89 N. Y. Supp. 418; Leffmann v. Long Island R. Co., 120 App. Div. 528, 105 N. Y. Supp. 487, affirmed on opinion below 197 N. Y. 513, 90 N. E. 1160; Drew v. Village of White Plains, 157 App. Div. 394, 142 N. Y. Supp. 577; People ex rel. Flynn v. Woods, 169 App. Div. 649, 155 N. Y. Supp. 431; Keavey v. DeRago, 20 Misc. 105, 45 N. Y. Supp. 77; People ex rel. Crabtree v. Scully, 24 Misc. 412, 53 N. Y. Supp. 645; Matter of Motley, 24 Misc. 488, 53 N. Y. Supp. 878; Matter of Miner's Estate, 39 Misc. 605, 80 N. Y. Supp. 643; Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742; People ex rel. Baumann v. Lyon, 77 Misc. 377, 136 N. Y. Supp. 534, affirmed, 154 App. Div. 266, 138 N. Y. Supp. 973; Dominick v. Stern, 79 Misc. 271, 139 N. Y. Supp. 59; Stimson v. Huggins, 16 Barb. 658; People v. N. Y. Cent. R. Co., 25 Barb. 199, affirmed, 13 N. Y. 78; Billings v. Baker, 28 Barb. 343; Freethy v. Freethy, 42 Barb. 641; West v. McGurn, 43 Barb. 198; Williams v. People, 45 Barb. 201, affirmed, 33 N. Y. 688; McClure v. Board of Supervisors of Niagara County, 50 Barb. 594, 3 Abb. App. Dec. 83; People v. Schoonmaker, 63 Barb. 44; Weiler v. Nembach, 13 Civ. Pro. 380; Jarvis v. Jarvis, 3 Edw. 462; Burch v. Newbury, 4 How. Pr. 145; People v. Coffee, 62 How. Pr. 445; Bishop v. Barton, 2 Hun 436, affirmed 64 N. Y. 637; Pierson v. People, 18 Hun 239, affirmed 79 N. Y. 424; Matter of Manning, 71 Hun 236, 24 N. Y. Supp. 1039, 54 N. Y. St. Rep. 562, appeal dismissed 139 N. Y. 446, 34 N. E. 931; People ex rel. Heiser v. Gilon, 76 Hun 346, 27 N. Y. Supp. 704, 58 N. Y. St. Rep. 602, affirmed 148 N. Y. 763, 43 N. E. 989; People ex rel. Strough v. Board of County Canvassers of Jefferson County, 77 Hun 372, 28 N. Y. Supp. 871, affirmed 143 N. Y. 84, 37 N. E. 649; Village of Oneida v. Thompson, 92 Hun 16, 37 N. Y. Supp. 889, 72 N. Y. St. Rep. 834; Dash v. Van Kleeck, 7 Johns. 477; McGuire v. Byrnes, 50 Hun 203, 2 N. Y. Supp. 760, 19 N. Y. St. Rep. 431; People ex rel. Comstock v. City of Syracuse, 59 Hun 258, 12 N. Y. Supp. 890, 36 N. Y. St. Rep. 296, affirmed 128 N. Y. 632, 29 N. E. 146; Weinckie v. New York Cent., etc., R. Co., 15 N. Y. Supp. 689, 39 N. Y. St. Rep. 584, affirmed 133 N. Y. 656, 31 N. E. 625; Walsh v. City of Buffalo, 92 Hun 438, 36 N. Y. Supp. 997, 72 N. Y. St. Rep. 99; People v. Waring, 5 App. Div. 311, 39 N. Y. Supp. 193; J. & A. McKechnie Brewing Co. v. Canandaigua, 15 App. Div. 139, 44 N. Y. Supp. 317, affirmed 162 N. Y. 631, 57 N. E. 1113; Miller v. McKeon, 15 App. Div. 133, 44 N. Y. Supp. 371; Matter of Attorney-General, 21 Misc. 101, 47 N. Y. Supp. 20, affirmed 22 App. Div. 285,

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intention of the legislature.[35] The legislative intent is said to be the "fundamental rule," [36] "the great principle which is to control," [37] "the cardinal rule" [38] and "the grand central light in which all statutes must be read." [39] Whatever may be the opinion of the judiciary as to the wisdom, expediency, or policy of an act,[40]

47 N. Y. Supp. 883; People ex rel. Catholic Union of City of Albany v. Sayles, 32 App. Div. 197, 53 N. Y. Supp. 67, affirmed 157 N. Y. 677, 51 N. E. 1092; Bohmer v. Haffen, 35 App. Div. 381, 54 N. Y. Supp. 1030, affirmed 161 N. Y. 390, 55 N. E. 1047; People ex rel. Behrmann v. Voorhis, 65 App. Div. 11, 72 N. Y. Supp. 293, affirmed 168 N. Y. 367, 61 N. E. 283; Matter of New York, 72 N. Y. Supp. 378; Kent v. City of Binghamton, 40 Misc. 1, 81 N. Y. Supp. 198, reversed 90 App. Div. 563, 86 N. Y. Supp. 411; Matter of O'Hara, 40 Misc. 355, 82 N. Y. Supp. 293; People ex rel. Gress v. Hilliard, 85 App. Div. 507, 83 N. Y. Supp. 204, affirmed 176 N. Y. 604, 68 N. E. 1122; People ex rel. Empire City Trotting Club v. State Racing Commission, 103 N. Y. Supp. 955; People ex rel. Cagger v. Dolan, 1 Trans. App. 118; Wood v. Donaldson, 17 Wend. 550. "The leading rule in the construction of statutes is to ascertain the intention of the legislature enacting the statute, and the intention being ascertained, the law is known, and the will of the legislature must be carried into effect." Chandler v. Northrop, 24 Barb. 129.

35. Clarke v. City of Rochester, 24 Barb. 446; Wilson v. Allen, 4 How. Pr. 54; People ex rel. Supervisors of Richmond v. Hopkins, 2 Thomp. & C. 586.

36. Jones v. Mail & Express Publishing Co., 80 Hun 368, 30 N. Y. Supp. 335. "The great leading and fundamental rule for the construction of statutes is to ascertain the intention of the legislature." People v. Tiphaine, 3 Park. Crim. 241, 13 How. Pr. 74.

37. People ex rel. Wood v. Lacombe, 99 N. Y. 43, 1 N. E. 599; People ex rel. Bockes v. Wemple, 115 N. Y. 302, 22 N. E. 272; People ex rel. Eickemeyer Dynamo Co. v. Rice, 29 Abb. N. C. 233, 21 N. Y. Supp. 48; Central Trust Company of New York v. New York Equipment Co., 31 Abb. N. C. 121, 74 Hun 405, 56 N. Y. St. Rep. 648, 26 N. Y. Supp. 850; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371, affirmed 150 N. Y. 269, 44 N. E. 942, 34 L. R. A. 175.

38. People ex rel. Onondaga County Savings Bank v. Butler, 147 N. Y. 164, 41 N. E. 416; Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 654. "The intention of the legislature is the cardinal consideration in the construction of statutes." Taggart v. Sisson, 55 Hun 569, 9 N. Y. Supp. 758, 29 N. Y. St. Rep. 424.

39. Hudson Iron Co. v. Alger, 54 N. Y. 173.

40. Hyatt v. Taylor, 42 N. Y. 258; People ex rel. Darling v. Warden of City Prison, 154 App. Div. 413, 139 N. Y. Supp. 277; People ex rel. Commissioners of Oneida v. Board of Supervisors of Oneida County, 36 Misc. 597, 73 N. Y. Supp. 1098, affirmed 170 N. Y. 105, 62 N. E. 1092; Lehigh Valley R. Co v. Canal Board, 69 Misc. 251, 125 N. Y. Supp. 227, affirmed 146 App. Div. 151, 130 N. Y. Supp. 978, modified 204 N. Y. 471, 97 N. E. 964, 1913C Ann. Cas. 1228; Hatch v. American Union Tel. Co., 9 Abb. N. C. 223; Suydam v. Moore, 8 Barb. 358; People ex rel. McSpedon v. Stout, 23 Barb. 349, 13 How. Pr. 314; Bell v. Yates, 33 Barb. 627; Reilly v. Gray, 77 Hun 402, 28 N. Y. Supp. 811; People ex rel. Terry v. Keller, 35 App. Div. 493, 54 N. Y. Supp. 1011, affirmed 158 N. Y. 187, 52 N. E. 1107; Livingston v. Harris, 11 Wend. 329; Barnard v. Viele, 21 Wend. 88. "Questions of expediency — of public policy — the justice, or injustice of statutes — were not intended to be committed to the domain of the courts. The remedy for unwise, defective, or unjust legislation is an appeal to the same sovereign power that occasioned it, to correct the evil." Bell v. Yates, 33 Barb. 627. "The question of public policy involved is one to be determined by the legislature; and, if the legislative intent is clear, then it must control the courts and the State officers. Lehigh Valley R. Co. v. Canal Board, 69 Misc. 251, 125 N. Y. Supp. 227, affirmed, 146 App. Div. 151, 130 N. Y. Supp. 978, modified 204 N. Y. 471, 97 N. E. 964, 1913C Ann. Cas. 1228.

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whatever excesses or omissions may be found in a statute,[41] the intent of the legislature is to be ascertained and effectuated.[42] The canons of interpretation, grammatical construction, punctuation,[43] the circumstance that inconvenience, hardship, injustice or other disastrous effects may result from the enforcement of the act,[44] even the literal wording of the statute,[45] must give way to the expressed intent of the lawgivers. So, too, in a controversy between the state and an individual, the intent of the legislature in any action it may have taken in respect to that controversy, is ascertained in the same manner as in a controversy between individuals.[46]

§ 53. Construction as of the time of enactment.—As a general rule, an act speaks, not from the time when it was enacted[47] or when the courts are called upon to interpret it, but as of the time it took effect.[48] "The act must now be construed as the courts would have construed it if it had come in question soon after its

"The legislature alone is responsible for the injustice, if any, resulting from unguarded and unwise legislation." People ex rel. Akin v. Morgan, 65 Barb. 473, reversed, 55 N. Y. 587. "The remedy for unjust or unwise legislation is not to be administered by the courts. It remains in the hands of the people; and is to be wrought out by means of a change in the representative body, if it cannot be otherwise obtained." People ex rel. Griffin v. Brooklyn, 4 N. Y. 419. "Courts are not responsible that only wise laws shall be made: they have no power given to them to judge of the wisdom of the legislature, nor to revise and alter that which has been enacted to be the law." People ex rel. Davies v. Cowles, 13 N. Y. 350. "Considerations of policy, in the sense of general public feeling, cannot avail in the courts against express legislative authority constitutionally granted. We are not to feel the public pulse before making up our minds to enforce the law. That would be an unwarrantable usurpation of the legislative function, and would throw all legal rights into a sea of doubt and confusion." Hatch v. American Union Tel. Co., 9 Abb. N. C. 223.

41. Rosenplaenter v. Roessle, 54 N. Y. 262; Matter of Starbuck's Estate, 137 App. Div. 866, 122 N. Y. Supp. 584, affirmed on opinion below, 201 N. Y. 531, 94 N. E. 1098; People v. De Fornaro, 65 Misc. 457, 119 N. Y. Supp. 746; Bell v. Yates, 33 Barb. 627; People v. Weinstock, 140 N. Y. Supp. 453; Waller v. Harris, 20 Wend. 555. As to when omissions in statutes may be judicially supplied, see infra, § 74.

42. People ex rel. Davies v. Cowles, 13 N. Y. 350; Cathcart v. The Fire Department of City of New York, 26 N. Y. 529; People v. Glynn, 128 App. Div. 257, 112 N. Y. Supp. 695; Matter of Consolidated Gas Co. of New York, 56 Misc. 49, 106 N. Y. Supp. 407; The People v. Fishkill & Beekman Plank Road Co., 27 Barb. 445; Chamberlain v. Western Transportation Co., 45 Barb. 218; Tifft v. City of Buffalo, 8 N. Y. St. Rep. 325, reversed, 7 N. Y. Supp. 633, 27 N. Y. St. Rep. 72; People ex rel. Barron v. Martin, 48 N. Y. St. Rep. 288, 20 N. Y. Supp. 585.

43. As to grammar, punctuation, etc., of statutes, see infra, §§ 100–103.

44. As to the avoidance of objectionable consequences, see infra, §§ 77–89.

45. See infra, § 62, as to the rule relative to literal constructions.

46. People v. Stevens, 71 N. Y. 527.

47. Dunham v. Nicholson, 2 Sandf. 636.

48. People v. Flanagan, 66 N. Y. 237; People ex rel. Onondaga County Savings Bank v. Butler, 147 N. Y. 164, 41 N. E. 416; Matter of Birdsall,

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passage." [49] But there is not necessarily an incongruity in a statute using the future tense to denote occurrences happening immediately after or upon the enactment of a statute, "because the words of the act must be devised and used for it before it takes effect as law." [50] As an aid to construction, however, matters arising subsequent to the enactment of the statute are sometimes considered. For example, the practical construction which has been placed on the act by public officers and other persons,[51] and the evidence of legislative intent furnished by subsequent statutes,[52] are sometimes considered in determining the interpretation to be given an act. And a statute in general terms is not necessarily to be construed as applying only to temporarily existing evils; on the contrary, the statute may be framed so broadly as to apply to evils which subsequently may arise.[53] By the terms of the General Construction Law, each of the terms "heretofore" and "hereafter," in any provision of a statute, relates to the time such provision takes effect,[54] and it has been thought that the legislature, to preserve its consistency, must have intended that this statutory rule should apply to all terms denoting the past or the future.[55] And, according to the same general law, the term "now" in any provision of a statute referring to other laws in force, or to persons in office, or to any existing facts or circumstances, relates to the laws in force, or to the person in office, or to such facts or circumstances respectively, as of the time immediately before the taking effect of such provision.[56] In the case of an amendatory statute the unchanged portions of the old law are construed as of the date of the original enactment, and the changed portions are construed as of the time the amendatory act went into effect.[57] When the term "hereafter" is used in a statute which has been amended "to read as follows," it is construed distributively; as to the original provisions which are unchanged, it means

22 Misc. 180, 49 N. Y. Supp. 450, affirmed 43 App. Div. 624, 60 N. Y. Supp. 1133; People ex rel. Corning v. Benton, 44 Barb. 441; Dunham v. Nicholson, 2 Sandf. 636. As to when statutes take effect, see supra, §§ 42–43.

49. People v. Broadway R. Co. of Brooklyn, 126 N. Y. 29, 26 N. E. 961.

50. People v. Starkweather, 42 N. Y. Super. Ct. 325.

51. See infra, §§ 108, 109.

52. See infra, § 69.

53. People's Rapid Transit Co. v. Dash, 125 N. Y. 93, 26 N. E. 25, 10 L. R. A. 728; Jerome Park Co. v. Board of Police of New York, 11 Daly 208; Gifford v. Livingston, 2 Denio 380.

54. General Construction Law, § 23. And see People ex rel. Corning v. Benton, 44 Barb. 441; Dunham v. Nicholson, 2 Sandf. 636.

55. Green v. Dikeman, 18 Barb. 535.

56. General Construction Law, § 34. And see Leach v. Auwell, 154 App. Div. 170, 138 N. Y. Supp. 975.

57. As to the construction of amendatory statutes, see infra, §§ 114–118.

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subsequent to the original enactment; as to the new portions, it means subsequent to the time the amendment took effect.[58] But, at least in cases where the provisions of the General Construction Act are not controlling, the question of time construction, like other matters of interpretation, depends on the legislative intent;[59] and a different conclusion may be reached where the language of the act, construed in the light of the canons of interpretation and surrounding circumstances, indicates that the legislature had a different intent. Hence, "next" may be deemed to refer to an event between the time of the passage of the act and the time set for it to go into force.[60] So a statute authorizing measures to be taken for railroad aid by a town on obtaining the consent of a majority of taxpayers appearing upon the "last assessment roll," has been construed as referring to the roll preceding the time of acceptance by the town, not the roll preceding the passage of the statute.[61] Where a statute applied to localities of a certain description, as, for example, cities of a certain population, it was held to be confined to such localities as came within the description at the time the act went into effect, and that it could not apply to other cities which subsequently were found to have the prescribed population.[62] But it has been held that section 241 of the Code of Civil Procedure granting a county judge within his county "the power conferred by law in general language upon an officer authorized to perform the duties of a justice of the supreme court at chambers or out of court," is not limited to the power of the officer at the time the Code was adopted, but changes with an alteration of the power.[63]

§ 54. **Purport of language.** — In arriving at the intent of the legislature, the courts are not to speculate as to the possible thoughts which might have been in the minds of the legislators when the statute was enacted.[64] "It is not for the

58. Ely v. Holton, 15 N. Y. 595.
59. See supra, § 52.
60. People v. Flanagan, 66 N. Y. 237.
61. Town of Duanesburgh v. Jenkins, 40 Barb. 574; Town of Duanesburgh v. Jenkins, 46 Barb. 294, affirmed. 57 N. Y. 177.
62. Stack v. City of Brooklyn, 150 N. Y. 335, 44 N. E. 1030.
63. People ex rel. Parr v. Parr, 121 N. Y. 679, 24 N. E. 481.
64. Matter of Rochester Water Commissioners, 66 N. Y. 413; People ex rel. Hall v. Supervisors of Greene, 13 Abb. N. C. 421, 66 How. Pr. 330; Forrest v. Forrest, 10 Barb. 46, 5 How. Pr. 125, 9 N. Y. Leg. Obs. 89, 3 Code Rep. 141; Berley v. Rampacher, 5 Duer 183; Matter of New York Cable R. Co., 40 Hun 1; People ex rel. Smith v. Gilon, 66 App. Div. 25, 72 N. Y. Supp. 1041; People v. Weinstock, 140 N. Y. Supp. 453. "When the words of a statute have a definite and precise meaning, such meaning cannot be extended or restricted by conjecture, or under the

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court, acting upon conjecture and surmising what may have been the intent of the legislature, to interpolate exceptions in the statute, thus in effect avoiding and nullifying the express declaration of the legislature." [65] On the contrary, the legislative intent is to be determined primarily from the language used in the act, read in connection with the canons of interpretation and surrounding circumstances.[66] The language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction.[67] Words of ordinary import

guise or pretext of interpretation. It is not allowable to interpret that which has no need of interpretation." Mushlitt v. Silverman, 50 N. Y. 360.

65. Johnson v. Hudson River R. Co., 49 N. Y. 455; People ex rel. Eakins v. Roosevelt, 12 Misc. 622, 34 N. Y. Supp. 228, 68 N. Y. St. Rep. 85, affirmed, 14 Misc. 531, 35 N. Y. Supp. 1085, affirmed 149 N. Y. 574, 43 N. E. 989; People v. Abeel, 45 Misc. 86, 91 N. Y. Supp. 699, affirmed 100 App. Div. 516, 91 N. Y. Supp. 1107, affirmed 182 N. Y. 415, 75 N. E. 307, 1 L. R. A. (N. S.) 730.

66. Newell v. People, 7 N. Y. 8; Curtis v. Leavitt, 15 N. Y. 9; Smith v. People, 47 N. Y. 330; Johnson v. Hudson River R. Co., 49 N. Y. 455; Rosenplaenter v. Roessle, 54 N. Y. 262; People of the State of New York v. Gates, 56 N. Y. 387; Furey v. The Town of Gravesend, 104 N. Y. 405, 10 N. E. 698; People ex rel. Bockes v. Wemple, 115 N. Y. 302, 22 N. E. 272; McKuskie v. Hendrickson, 128 N. Y. 555, 28 N. E. 650; City of New York v. Manhattan R. Co., 143 N. Y. 1, 37 N. E. 494; Tompkins v. Hunter, 149 N. Y. 117, 43 N. E. 532; Wiley v. Solvay Process Co., 215 N. Y. 584, 109 N. E. 606; People ex rel. Trustees of Diocese of Long Island v. Dohling; 6 App. Div. 88, 39 N. Y. Supp. 766; Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961; People ex rel. McNeile v. Glynn, 128 App. Div. 257, 112 N. Y. Supp. 695; Dominick v. Stern, 79 Misc. 271, 139 N. Y. Supp. 59; People ex rel. Hall v. Supervisors of Greene, 13 Abb. N. C. 421, 66 How. Pr. 330; Williams v. People, 45 Barb. 201, affirmed 33 N. Y. 688; Chamberlain v. Western Transportation Co., 45 Barb. 218, reversed 44 N. Y. 305; Hyatt v. Taylor, 51 Barb. 632, affirmed 42 N. Y. 258; People v. Schoonmaker, 63 Barb. 44; Berley v. Rampacher, 5 Duer 183; Village of Rome v. Knox, 14 How. Pr. 268; Matter of Reciprocity Bank, 17 How. Pr. 323, 29 Barb. 369, reversed 22 N. Y. 9; Handy v. Draper, 23 Hun 256, reversed, 89 N. Y. 334; People ex rel. Emerick v. Fire Commissioners of City of New York, 23 Hun 317, affirmed 86 N. Y. 149; Matter of Board of Street Opening, 62 Hun 499, 16 N. Y. Supp. 894, affirmed 133 N. Y. 329, 31 N. E. 102, 16 L. R. A. 180; People v. Utica Ins. Co., 15 Johns. 381; Lucas v. Ensign, 4 N. Y. Leg. Obs. 142; Matter of McGuire, 50 Hun 203, 19 N. Y. St. Rep. 431, 2 N. Y. Supp. 760; People v. City of Buffalo, 57 Hun 577, 11 N. Y. Supp. 314, 35 N. Y. St. Rep. 323; People v. Upson, 79 Hun 87, 29 N. Y. Supp. 615, 61 N. Y. St. Rep. 158, affirmed on opinion below, 147 N. Y. 716, 42 N. E. 725; Mongeon v. People, 2 Thomp. & C. 128. "The conclusion reached as to its meaning must be from the language of the act as chosen and used by the legislature in connection with relevant facts relating to the purpose sought to be accomplished by it." Wiley v. Solvay Process Co., 215 N. Y. 584, 109 N. E. 606.

67. McCluskey v. Cromwell, 11 N. Y. 593; Holmes v. Carley, 31 N. Y. 289; Chamberlain v. Western Transportation Co., 44 N. Y. 305; Smith v. People, 47 N. Y. 330; Matter of New York & Brooklyn Bridge, 72 N. Y. 527; Matter of Goddard, 94 N. Y. 544; Gilmore v. City of Utica, 121 N. Y. 561, 24 N. E. 1009; Hudson River Telephone Co. v. Watervliet, etc., R. Co., 135 N. Y. 393, 32 N. E. 148, 17 L. R. A. 674; People ex rel. Onondaga County Savings Bank v. Butler, 147 N. Y. 164, 41 N. E. 416; Anglo-Am. Provision Co. v. Davis Provision Co., 169 N. Y. 506, 62 N. E. 587; Matter of Sherrill v. O'Brien, 188 N. Y. 185, 81 N. E. 124; People ex rel. McNeile v. Glynn, 128 App. Div. 257, 112 N. Y. Supp. 695; Matter of Birdsall, 22 Misc. 180, 49 N. Y. Supp. 450,

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receive their understood meaning,[68] and technical terms are construed in their special sense.[69] Especially is the plain import of the language to be given its effect in the construction of constitutional provisions, for the words are deemed to have been used most solemnly and deliberately.[70] While the literal meaning of the statute may be avoided to effectuate the legislative intent,[71] the legislature is presumed to mean what it says; and, if there is no ambiguity in the act, it is generally construed according to its plain terms.[72]

§ 55. Statutes too clear for construction.— Some statutes are framed in language so plain that an attempt to construe them is superfluous. The function of the courts is to enforce statutes, not to usurp the power of legislation;[73] and, if the legislative intent is clear, no attempt at construction will be made.[74] The courts will carry out the obvious intention of the law-making body, subject only to its power to strike down an enactment which conflicts with the state or federal constitution. When the language is explicit, the courts are bound to seek for the intention in the words of the act itself to the extent that they are not at liberty to suppose or to hold that the legislature had an intention other than

affirmed 43 App. Div. 624, 60 N. Y. Supp. 1133; People v. Abeel, 45 Misc. 86, 91 N. Y. Supp. 699, affirmed 100 App. Div. 516, 91 N. Y. Supp. 1107, affirmed 182 N. Y. 415, 75 N. E. 307, 1 L. R A. (N. S.) 730; Dunn v. Neustadtl, 72 Misc. 1, 129 N.Y. Supp. 161; Matter of Cary, 77 Misc. 602, 138 N. Y. Supp. 682; Jerome Park Co. v. Board of Police, 11 Abb. N. C. 342; Forrest v. Forrest, 10 Barb. 46, 5 How. Pr. 125, 9 N. Y. Leg. Obs. 89, 3 Code Rep. 141; People v. N. Y. Cent., etc., R. Co. 25 Barb. 199, affirmed, 13 N. Y. 78; Bell v. Yates, 33 Barb. 627; Chamberlain v. Western Transportation Co., 45 Barb. 218, reversed, 44 N. Y. 305; Matter of Tipple, 2 Connoly 508, 13 N. Y. Supp. 263; Smith v. City of New York, 1 Hun 56; People v. French, 46 Hun 232; People ex rel. Supervisors of Richmond v. Hopkins, 2 Thomp. & C. 586; Furman v. Mayor, etc., of New York, 5 Sandf. 16, affirmed, 10 N. Y. 567; Waller v. Harris, 20 Wend. 555. "It is very dangerous for courts to launch out too far, in searching into the intent of the legislature, when they have expressed themselves in clear and plain words. Burch v. Newbury, 10 N. Y. 374. "The intent of the legislature is to be collected from the language of the statute, applied to the subject-matter, and in view of public and notorious facts existing when the statute was enacted." Brown v. City of New York, 63 N. Y. 239.

68. See infra, § 123.

69. See infra, § 124.

70. Newell v. People, 7 N. Y. 9.

71. See infra, § 62.

72. As to statutes too clear for construction, see infra, § 55.

73. See §§ 30 and 90.

74. Ellicott v. Mosier, 7 N. Y. 201; McCluskey v. Cromwell, 11 N. Y. 593; People v. New York Cent. R. Co., 13 N. Y 78; Chegary v. City of New York, 13 N. Y. 220; People ex rel. Hoyt v. Com'rs of Taxes, 23 N. Y. 224; People v. Denniston, 23 N. Y. 247; Mount v. Mitchell, 31 N. Y. 356; Levy v. Levy, 33 N. Y. 97; Hyatt v. Taylor, 42 N. Y. 258; Johnson v. Hudson River R. Co., 49 N. Y. 455; Mushlitt v. Silvermann, 50 N. Y. 360; Phelps v. Racey, 60 N. Y. 10; Gillespie v. Zittlosen, 60 N. Y. 449; People ex rel. Bowen v. Jones, 63 N. Y. 306; McGaffin v. City of Cohoes, 74 N. Y.

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their language imports.[75] But the fact that the words used are not ambiguous does not prohibit the courts from considering the surrounding circumstances, the canons of construction, acts *in pari materia,* and other considerations indicating the legislative intent;[76] it is clear intent, not clear language, which precludes further investigation as to the interpretation of a statute. Language of a portion of an act, which, when separated from the rest, is plain and unambiguous, may, when read in connection with the whole act, be thereby rendered ambiguous, and thereupon the necessity for construction arises.[77] And, if a statute viewed from the standpoint of the literal sense of the language, works an unjust or unreasonable result, an obscurity of meaning exists which calls for judicial construction.[78]

§ 56. The mischief to be remedied.— In determining the meaning of a statute, the particular mischief or evil which the act was

387; Pierson v. People, 79 N. Y. 424; Mangam v. City of Brooklyn, 98 N. Y. 585; Matter of Miller, 110 N. Y. 216; People ex rel. Bockes v. Wemple, 115 N. Y. 302; People ex rel. Davidson v. Gilon, 126 N. Y. 147; City of New York v. Dry Dock, etc., Battery R. Co., 133 N. Y. 104; People ex rel. Onondaga County Savings Bank v. Butler, 147 N. Y. 167; Tompkins v. Hunter, 149 N. Y. 117; Fire Department v. Stanton, 159 N. Y. 225; People v. Long Island R. R. Co., 194 N. Y. 130; People v. Dohling, 6 App. Div. 86, 39 N. Y. Supp. 765; People v. Columbia County, 105 App. Div. 319; People ex rel. Hall v. Ford, 127 App. Div. 444, 112 N. Y. Supp. 130; People ex rel. Urban W. S. Co. v. Connolly, 164 App. Div. 163, 149 N. Y. Supp. 693; In re Cullinan, 39 Misc. 636, 80 N. Y. Supp. 607; People v. Abeel, 45 Misc. 86, 91 N. Y. Supp. 699, affirmed 100 App. Div. 516, 91 N. Y. Supp. 1107, affirmed 182 N. Y. 415; Hatch v. American Union Tel. Co., 9 Abb. N. C. 223; Waterford & Whitehall Turnpike Co. v. People, 9 Barb. 161; Benson v. New York, 10 Barb. 223; People v. N. Y. Cent. R. Co., 25 Barb. 199; Hyatt v. Taylor, 51 Barb. 632; Ball v. Bullard, 52 Barb. 141; People v. Schoonmaker, 63 Barb. 44; Dull v. People, 4 Denio 91; Rome v. Knox, 14 How. Pr. 268; People ex rel. Frost v. Wilson, 3 Hun 437; Dibble v. Hathaway, 11 Hun 575; People v. Fire Commissioners, 23 Hun 319; Matter of New York, etc., R. Co., 35 Hun 635; Matter of Board of Street Opening, 62 Hun 499; People v. Fitch, 89 Hun 310, 35 N. Y. Supp. 193, 69 N. Y. St. Rep. 548, modified, 148 N. Y. 71; Troup v. Smith, 20 Johns. 33; Pursell v. N. Y. Life Ins., etc., Co., 10 J. & S. 383; Matter of Ford, 6 Lans. 92; Matter of Nichols, 36 N. Y. Supp. 538; Beekman v. Third Ave. R. Co., 43 N. Y. Supp. 180; J. & A. McKechnie Brew. Co. v. Canandaigua, 44 N. Y. Supp. 317; People v. Keller, 54 N. Y. Supp. 1016; Matter of Robert's Will, 98 N. Y. Supp. 809; Gardner v. The Roycrofliers, 103 N. Y. Supp. 584; Matter of White's Estate, 103 N. Y. Supp. 688; Estate of Miller, 18 N. Y. St. Rep. 226. "The fundamental rule for the construction of statutes is, to give effect to the language, if that is clear and unambiguous; and, when the language is only capable of one definite and intelligible construction, it is not allowable to speculate upon the supposed intent for the purpose of giving it a different meaning." Gillespie v. Zittlosen, 60 N. Y. 449.

75. Mongeon v. People, 2 Thomps. & C. 128. And see supra, § 54, as to following the purport of the language.

76. People v. Davenport, 91 N. Y. 574.

77. People ex rel. Onondaga County Sav. Bank v. Butler, 147 N. Y. 164.

78. Matter of Meyer, 209 N. Y. 386.

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designed to remedy is considered.[79] The cause or necessity of the law are always of value in expounding a statute.[80] As was said

79. Matter of Cooper, 22 N. Y. 67; Parker Mills v. Commissioners of Taxes, 23 N. Y. 242; People v. New Jersey Cent. R. Co., 42 N. Y. 283; People v. Potter, 47 N. Y. 375; Ayers v. Lawrence, 59 N. Y. 192; Pierson v. People, 79 N. Y. 424; Wiley v. Solvay Process Co., 215 N. Y. 584; Matter of City of New York, 57 App. Div. 166, 68 N. Y. Supp. 196, affirmed, 167 N. Y. 624; McGrath v. Grout, 69 App. Div. 314, 74 N. Y. Supp. 782, affirmed 171 N. Y. 7; Matter of Morgan, 114 App. Div. 45, 99 N. Y. Supp. 775; Baxter v. York Realty Co., 128 App. Div. 79, 112 N. Y. Supp. 455, affirmed without opinion, 198 N. Y. 521; Seymour v. Wheeler, 137 App. Div. 52, 122 N. Y. Supp. 183; People v. Moore, 142 App. Div. 402, 127 N. Y. Supp. 98, affirmed without opinion, 201 N. Y. 570; Colyer v. Richard K. Fox Pub. Co., 162 App. Div. 297, 146 N. Y. Supp. 999; Matter of Birdsall, 22 Misc. 180, 49 N. Y. Supp. 450; Ellis v. Hurst, 70 Misc. 122, 128 N. Y. Supp. 144, affirmed without opinion, 145 App. Div. 918, 130 N. Y. Supp. 1110; Pillow v. Bushnell, 5 Barb. 156, 2 Code Rep. 19, 4 How. Pr. 9; Colvin v. Currier, 22 Barb. 371; Billings v. Baker, 28 Barb. 343; White v. Magee, 32 Barb. 250, affirmed 25 N. Y. 328; Chamberlain v. Western Transportation Co., 45 Barb. 218; McClure v. Board of Supervisors of Niagara County, 50 Barb. 594; People v. Pignatoro, 26 N. Y. Cr. Rep. 531, 136 N. Y. Supp. 155; Gillespie v. Winberg, 4 Daly 318; Humbert v. St. Stephen's Church, 1 Edw. Ch. 308; People v. Potter, 42 How. Pr. 260; People v. Coffee, 62 How. Pr. 445; Coles v. Burns, 21 Hun 249; Exempt Firemen's Benevolent Fund v. Roome, 29 Hun 391; Peck v. Baldwin, 58 Hun 308, 11 N. Y. Supp. 792, 34 N. Y. St. Rep. 511, 19 Civ. Pro. Rep. 403; Torbett v. Godwin, 62 Hun 407; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371, 58 N. Y. St. Rep. 70, affirmed, 150 N. Y. 269; Martin v. Goldstein, 46 N. Y. Supp. 965; Matter of Birdsall, 49 N. Y. Supp. 450; Tyrrell v. Mayor, 54 N. Y. Supp. 372; Munzinger v. United Press, 65 N. Y. Supp. 194; People v. State Racing Commission, 103 N. Y. Supp. 955. "The evil sought to be prevented is to be ascertained, and the new enactment adopted for its corrections, is to be read in view thereof. And though this rule is generally invoked in aid of a literal construction of the statute, so that the remedy intended may be secured, yet, it is based upon the idea of arriving at the intention of the legislature by considering what was in contemplation when the law was enacted. And it is equally rational to recur thereto to prevent a stretching of the law beyond the remedy, and so beyond the intention, as it is to bring up to the full measure of the proposed relief." People v. Potter, 42 How. Pr. 260, affirmed 47 N. Y. 375.

80. Tonnele v. Hall, 4 N. Y. 140; Burch v. Newbury, 10 N. Y. 374; Reno v. Pinder, 20 N. Y. 298; Holmes v. Carley, 31 N. Y. 289; People v. New Jersey Cent. R. Co., 42 N. Y. 283; Chamberlain v. Western Transportation Co., 44 N. Y. 305; People ex rel. Wood v. Lacombe, 99 N. Y. 43; Tompkins v. Hunter, 149 N. Y. 117; Flynn v. Prudential Ins. Co. of America, 207 N. Y. 315; Tonjes v. Tonjes, 14 App. Div. 542; De Camp v. Thompson, 16 App. Div. 528, 44 N. Y. Supp. 1014, affirmed 159 N. Y. 536; Matter of Birdsall, 22 Misc. 180, 49 N. Y. Supp. 450; Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742; People ex rel. Enright v. Meyers, 71 Misc. 77, 129 N. Y. Supp. 1099; People ex rel. Eickemeyer Dynamo Co. v. Rice, 29 Abb. N. C. 233; West v. McGurn, 43 Barb. 198; People v Eddy, 57 Barb. 593; People v. Pignatoro, 26 N. Y. Cr. Rep. 531, 136 N. Y. Supp. 155; Humbert v. St. Stephen's Church, 1 Edw. Ch. 308; Rice v. Mead, 22 How. Pr. 445; People v. Supervisors, 49 Hun 32; Spencer v. Myers, 73 Hun 278; Central Trust Co. v. New York Equipment Co., 74 Hun 405, 31 Abb. N. C. 121, 26 N. Y. Supp. 850, 56 N. Y. St. Rep. 648; Dash v. Van Kleeck, 7 Johns. 486; Jackson v. Van Zandt, 12 Johns. 176; People v. Utica Ins. Co., 15 Johns. 381; Furman v. Mayor, etc., of New York, 5 Sandf. 16, affirmed 10 N. Y 567; People v. City of Buffalo, 11 N. Y. Supp. 314, 35 N. Y. St. Rep 323; Martin v. Goldstein, 46 N. Y Supp. 965; Gusthal v. Board of Aldermen, 48 N. Y. Supp. 654; M'Avoy v. New York, 65 N. Y. Supp. 278; People ex rel. Supervisors of

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by Chancellor Kent,[81] the intent with which statutes were enacted "is to be collected from the context, from the occasion and necessity of the law, from the mischief felt and the objects and the remedy in view." Where the words are obscure, so that the legislative intent does not clearly appear, it may be inferred from the cause or necessity of the statute.[82] The consideration of the evil to be corrected is especially important in the exposition of remedial statutes, which are construed so as to meet the mischief and advance the remedy.[83] It is a salutary rule in the interpretation of a remedial statute, first to ascertain the evil in the existing law and then assume that the statute was intended to remedy such evil.[84] With reference to such a statute, the following formula is sometimes laid down for the guidance of the courts: (1) What was the common law before the act? (2) What was the mischief against which the common law did not provide? (3) What remedy has the legislature provided to cure the defect? (4) What was the true reason of that remedy?[85] A statute framed in language of general import, not only may be deemed applicable to temporary existing evils, but may be construed to meet those which subsequently arise.[86]

§ 57. General purpose and spirit of statute.— The general purpose and spirit underlying the enactment of a statute are

Richmond v. Hopkins, 2 Thomps. & C. 586; People v. Manhattan Co., 9 Wend. 351.

81. 1 Kent's Com. 462. And see to the same effect Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961; Chamberlain v. Western Transportation Co., 45 Barb. 218; Humbert v. St. Stephen's Church, 1 Edw. Ch. 308.

82. People v. Eddy, 57 Barb. 593; People v. Asten, 6 Daly 18, affirmed 62 N. Y. 623.

83. Beal v. Flinch, 11 N. Y. 128; Commissioners of Excise v. Taylor, 21 N. Y. 173; Johnson v. Oppenheim, 55 N. Y. 280; Matter of Davies, 168 N. Y. 89; Tallman v. Syracuse, etc., R. R. Co., 4 Abb. Ct. App. Dec. 351, 4 Keyes 128; Billings v. Baker, 28 Barb. 343; Freeman v. McCullough, 1 Denio 414; People v. Asten, 6 Daly 18, affirmed, 62 N. Y. 623; Smith v. Strong, 2 Hill 241; Pierson v. People, 18 Hun 237; Oswego v. Collins, 38 Hun 174; Hart v. Cleis, 8 Johns. 41; Donaldson v. Wood, 22 Wend. 395.

84. People ex rel. Delaware & Hudson Co. v. Stevens, 134 App. Div. 99, 118 N. Y. Supp. 969, affirmed 197 N. Y. 1.

85. Juliand v. Rathbone, 39 N. Y. 369; White v. Wagar, 32 Barb. 250, affirmed, 25 N. Y. 328; Freeman v. McCullough, 1 Denio 414; Rosin v. Lidgerwood Mfg. Co., 86 N. Y. Supp. 52; Clark v. Brown, 18 Wend. 213.

86. Jerome Park Co. v. Board of Police, 11 Abb. N. C. 342, 11 Daly 208; Gifford v. Livingston, 2 Denio 380; People's Rapid Transit Co v. Dash, 125 N. Y. 93. "It cannot be claimed, however, that if by an act of the legislature an attempt is made to reach an evil then existing, and language is used in such act more comprehensive than necessary to reach the evil as then practiced, that such act cannot be made to apply to a new development of the evil, although within the letter of the statute, merely because the evil is practiced in a different form from that in which it was practiced at the time of the passing of the act." Jerome Park Co. v. Board of Police of New York, 11 Daly 208.

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material considerations determining the meaning which shall be attached to its language.[87] It is not necessary to the validity of a statute that the legislature should declare on the face of the act the policy or purpose for which it was enacted.[88] But the courts will assume that a statute was not enacted without some purpose, and also that the purpose was a practical and reasonable one, directed to some useful result, beneficial to some persons; and, acting on such assumption, they will attempt to ascertain such

87. People v. New York Cent., etc., R. Co., 13 N. Y. 78; Curtis v. Leavitt, 15 N. Y. 9; Behan v. People, 17 N. Y. 516; Matter of Cooper, 22 N. Y. 67; People v. Potter, 47 N. Y. 375; Hudson Iron Co. v. Alger, 54 N. Y. 173; Ayers v. Lawrence, 59 N. Y. 192; People ex rel. Manhattan Fire Insurance Co. v. New York City and County, 76 N. Y. 64; Pierson v. People, 79 N. Y. 424; People ex rel. Wood v. Lacombe, 99 N. Y. 43; People ex rel. Oakley v. Bleckwenn, 126 N. Y. 310; Grannan v. Westchester Racing Assoc., 153 N. Y. 449; Matter of School Board of Brooklyn, 157 N. Y. 566; Caddy v. Interborough Rapid Transit Co., 195 N. Y. 415; People v. Ahearn, 196 N. Y. 221; People v. Langan, 196 N. Y. 260; People ex rel. Binghamton Light, Heat & Power Co. v. Stevens, 203 N. Y. 7; People ex rel. New York Edison Co. v. Willcox, 207 N. Y. 86; Matter of Meyer, 209 N. Y. 386; Wiley v. Solvay Process Co., 215 N. Y. 584; Bank of Metropolis v. Faber, 1 App. Div. 341, 37 N. Y. Supp. 423, 72 N. Y. St. Rep. 673, affirmed 150 N. Y. 200; Cocheu v. Methodist Protestant Church, 32 App. Div. 239, 52 N. Y. Supp. 1019; New York Cent., etc., R. Co. v. Buffalo, etc., Elec. R. Co., 96 App. Div. 471, 89 N. Y. Supp. 418; Pelin v. New York Cent., etc., R. Co., 102 App. Div. 71, 92 N. Y. Supp. 468, affirmed 181 N. Y. 252; Weir v. Barker, 104 App. Div. 112, 93 N. Y. Supp. 732; Seymour v. Wheeler, 137 App. Div. 52, 122 N. Y. Supp. 183; Lipstein v. Provident Loan Society, 154 App. Div. 732, 139 N. Y. Supp. 799; People ex rel. Flynn v. Woods, 169 App. Div. 649; Matter of Fitzgerald, 21 Misc. 226, 45 N. Y. Supp. 630; People v. Lovell, 21 Misc. 570, 48 N. Y. Supp. 879; Matter of Trask, 45 Misc. 244, 92 N. Y. Supp. 156; Stachelberg v. Stachelberg, 52 Misc. 22, 101 N. Y. Supp. 178; People v. Gilbert, 68 Misc. 48, 123 N. Y. Supp. 264; People ex rel. Enright v. Meyers, 71 Misc. 77, 129 N. Y. Supp. 1099; Torbett v. Goodwin, 27 Abb. N. C. 444, 62 Hun 407, 42 N. Y. St. Rep. 323, 17 N. Y. Supp. 46; People ex rel. Eickemeyer Dynamo Co. v. Rice, 29 Abb. N. C. 233; Murray v. New York Cent., etc., R. Co., 3 Abb. Dec. 339; Pillow v. Bushnell, 5 Barb. 156, 2 Code Rep. 19, 4 How Pr. 9; Williams v. People, 45 Barb. 201; McClure v. Board of Supervisors of Niagara County, 50 Barb. 594; People v. Potter, 42 How. Pr. 260; O'Rourke v. People, 3 Hun 238; People v. Hoe, 20 Hun 30; People v. Supervisors, 49 Hun 32; Peck v. Baldwin, 58 Hun 310; Torbett v. Godwin, 62 Hun 407; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371, 58 N. Y. St. Rep. 70, affirmed, 150 N. Y. 269; People ex rel. Heiser v. Gilon, 76 Hun 346, 27 N. Y. Supp. 704, 58 N. Y. St. Rep. 602, affirmed, 148 N. Y. 763; Jones v. Mail & Express Publishing Co., 80 Hun 368; Bank of Utica v. Magler, 18 Johns. 341; Chamberlain v. Chamberlain, 3 Lans. 348; People v. City of Buffalo, 11 N. Y. Supp. 315; Gillin v. Canary, 44 N. Y. Supp. 313; People v. Allen, 45 N. Y. Supp. 74; Gusthal v. Strong, 48 N. Y. Supp. 652; Matter of Burdall, 49 N. Y. Supp. 450; People v. Fitch, 51 N. Y. Supp. 683; People v. Hilliard, 83 N. Y. Supp. 206; Matter of Niagara, etc., Power Co., 97 N. Y. Supp. 853; Nicholson v. N. Y. City Ry. Co., 103 N. Y. Supp. 695; People v. State Racing Commission, 103 N. Y. Supp. 956; People v. Supervisors, 104 N. Y. Supp. 353. The spirit of a law may be referred to in order to interpret words admitting of two meanings, but not to extend to a case not within its fair meaning. Beebe v. Griffing, 14 N. Y. 235.

88. People v. West, 106 N. Y. 293.

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purpose.[89] After the ascertainment of the purpose, the statute is construed with it constantly in view;[90] and a narrow construction which would defeat the purpose of the act is to be avoided.[91] A particular provision of a statute is not to be given a special meaning at variance with the general purpose of the statute, unless it is clear that the legislature so intended.[92] If the spirit and purpose of an act find fair expression in the act, it is construed accordingly, even though the interpretation thus placed upon it is contrary to the literal meaning of some of its provisions.[93]

§ 58. Construction in furtherance of object of statute.— The words of a statute are construed with reference to its subject-matter and the object sought to be obtained;[94] and that construction is to be preferred which furthers the object, spirit and purpose of the statute.[95] A statute should be held to have accomplished what the legislature had in view, when the language will

89. Manning, etc., Co. v. Keenan, 73 N. Y. 45.

90. People v. New York Commissioners of Taxes, 95 N. Y. 554.

91. People ex rel. Bingham v. State Water Supply Co., 153 App. Div. 587, 138 N. Y. Supp. 746; People v. Potter, 42 How. Pr. 260.

92. People v. Long Island R. Co., 194 N. Y. 130.

93. People ex rel. Wood v. Lacombe, 99 N. Y. 43; Topham v. Interurban St. Ry. Co., 96 App. Div. 323, 89 N. Y. Supp. 298; West v. McGurn, 43 Barb. 198; Weilver v. Newbach, 13 Civ. Proc. Rep. 380; Burch v. Newbury, 4 How. Pr. 145; Rice v. Mead, 22 How. Pr. 445; Spencer v. Myers, 73 Hun 278; Central Trust Co. v. New York Equipment Co., 74 Hun 405, 31 Abb. N. C. 121, 26 N. Y. Supp. 850, 56 N. Y. St. Rep. 648; Jones v. Mail & Express Publishing Co., 80 Hun 368; People v. City of Buffalo, 11 N. Y. Supp. 314, 35 N. Y. St. Rep. 323; Gusthal v. Board of Aldermen, 48 N. Y. Supp. 654; Topham v. Interurban St. Ry. Co., 89 N. Y. Supp. 301; People v. Manhattan Co., 9 Wend. 351. As to the avoidance of a literal construction, see infra, § 90.

94. People v. New Jersey Cent. R. Co., 42 N. Y. 283; Matter of Evergreens, 47 N. Y. 216; People v. Fishbough, 134 N. Y. 393; Karst v. Gane, 136 N. Y. 316; Davis v. Supreme Lodge, Knights of Honor, 165 N. Y. 159; City of Rochester v. Fourteenth Ward Building Lot Assoc., 183 N. Y. 23; People v. Lyons, 29 App. Div. 174, 51 N. Y. Supp. 811; People v. Lovell, 21 Misc. 570, 48 N. Y. Supp. 879; People v. Gilbert, 68 Misc. 48, 123 N. Y. Supp. 264; Torbett v. Goodwin, 27 Abb. N. C. 444, 62 Hun 407, 42 N. Y. St. Rep. 323, 17 N. Y. Supp. 46; People v. Gardner, 59 Barb. 198; Skinner v. Tibbitts, 13 Civ. Proc. R. 370; Watervliet Turnpike Co. v. McKean, 6 Hill 616; O'Rourke v. People, 3 Hun 238; Cagwin v. Hancock, 22 Hun 201; Chamberlain v. Chamberlain, 3 Lans. 348; Pearsall v. Elmer, 5 Redf. 181; People ex rel. Barron v. Martin, 20 N. Y. Supp. 585, 48 N. Y. St. Rep. 288; People v. Allen, 45 N. Y. Supp. 76; People ex rel. Cagger v. Dolan, 1 Trans. App. 118.

95. Beal v. Flinch, 11 N. Y. 128; Matter of Cooper, 22 N. Y. 67; Juliand v. Rathbone, 39 N. Y. 369; Johnson v. Oppenheim, 55 N. Y. 280; Matter of O'Neil, 91 N. Y. 516; People ex rel. Collins v. Spicer, 99 N. Y. 225; Delafield v. Brady, 108 N Y. 524; McKuskie v. Hendrickson, 128 N. Y. 555; Tompkins v. Hunter, 149 N. Y. 117; People v. Fitzgerald, 180 N. Y. 269; Matter of Jannicky, 209 N. Y. 413; People v. Kaye, 212 N Y. 407; Josh v. Marshall, 33 App. Div. 77, 53 N. Y. Supp. 419; Drew v. Village of White Plains, 157 App. Div. 394, 142 N. Y. Supp. 577; People ex rel. Flynn v. Woods, 169 App. Div. 649; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74; Matter of Trask, 45 Misc. 244, 92 N. Y. Supp. 156; Tallman v. Syracuse, etc., R. R. Co.,

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warrant an interpretation favorable to the apparent object.[96] The object of a statute is of especial importance in the construction of a remedial act designed to cure some evil in the existing system of law. In such a case it is vitally important to consider and effectuate the contemplated reform.[97] The members of the court sometimes attempt to place themselves in the situation of the members of the legislature so as to ascertain the necessity and probable object of the statute, and then the court gives such construction to the language used as to carry the legislative intent into effect.[98]

§ 59. All parts to be construed together.— It is an important rule in the interpretation of statutes that all parts of an act are to be read and construed together in order to determine the legislative intent.[99] In short, a statute is construed as a

4 Abb. Ct. App. Dec. 351, 4 Keyes 128; Croswell v. Crane, 7 Barb. 191; Stimson v. Huggins, 16 Barb. 658; Cameron v. Seaman, 7 Hun 601; Prentice v. Whitney, 8 Hun 300; Esmund v. Bullard, 16 Hun 65; George v. Grant, 20 Hun 372; Matter of N. Y. Cable R. Co., 40 Hun 1; Hart v. Cleis, 8 Johns. 41; Briggs v. Tillotson, 8 Johns. 304; Farmers' Turnpike Co. v. Coventry, 10 Johns. 389; People v. Utica Ins. Co., 15 Johns. 358; Bank of Utica v. Magler, 18 Johns. 341; Rogers v. Bradshaw, 20 Johns. 735; Lucas v. Ensign, 4 N. Y. Leg. Obs. 142; Gillin v. Canary, 44 N. Y. Supp. 313; People v. Allen, 45 N. Y. Supp. 74; Martin v. Goldstein, 46 N. Y. Supp. 961.

96. Russell v. Ostrander, 30 How. Pr. 93.

97. Beal v. Flinch, 11 N. Y. 128; Dutcher v. Swartwood, 15 Hun 31; Hart v. Cleis, 8 Johns. 41. And see supra, § 56, relative to considering the mischief to be avoided.

98. People v. Columbia County, 43 N. Y. 130; Donaldson v. Wood, 22 Wend. 395.

99. People v. Draper, 15 N. Y. 532; Holmes v. Carley, 31 N. Y. 289; Cotheal v. Cotheal, 40 N. Y. 405; People v. Potter, 47 N. Y. 375; Ansonia Brass, etc., Co. v. New Lamp Chimney Co., 53 N. Y. 123, 13 Am. Rep. 476; Rosenplaenter v. Roessle, 54 N. Y. 262; In re New York, etc., Bridge, 72 N. Y. 527; People v. Davenport, 91 N. Y. 574; People v. McClave, 99 N. Y. 83, 1 N. E. 235; People v. Angle, 109 N. Y. 564, 17 N. E. 413; People v. Crennan, 141 N. Y. 239, 36 N. E. 187; Hayden v. Pierce, 144 N. Y. 512, 39 N. E. 638; People v. Butler, 147 N. Y. 164, 41 N. E. 416; In re Humfreville, 154 N. Y. 115, 47 N. E. 1086; People v. Feitner, 168 N. Y. 360, 61 N. E. 280; Staten Island M. R. Co. v. Hinchliffe, 170 N. Y. 473, 63 N. E. 545; Kuhn v. Knight, 190 N. Y. 339, 83 N. E. 293; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153; People v. Williams, 198 N. Y. 238, 91 N. E. 638, 139 A. S. R. 809; Seligman v. Friedlander, 199 N. Y. 373, 92 N. E. 1047; People v. Kennedy, 207 N. Y. 533, 101 N. E. 442, Ann. Cas. 1914C 616; In re Meyer, 209 N. Y. 386, 103 N. E. 713, Ann. Cas. 1915A 263, L. R. A. 1915C 615; Madison Trust Co. v. Carnegie Trust Co., 215 N. Y. 475, 109 N. E. 580; Jensen v. Southern Pac. Co., 215 N. Y. 514, 109 N. E. 600; People v. Warden of City Prison, 6 App. Div. 520, 39 N. Y. Supp. 582; Miller v. McKeon, 15 App. Div. 133, 44 N. Y. Supp. 371; O'Grady v. New York Mut. Live Stock Ins. Co., 16 App. Div. 567, 44 N. Y. Supp. 946, 78 N. Y. St. Rep. 946; People v. Collin, 19 App. Div. 457, 46 N. Y. Supp. 701, affirmed in People v. Elmira, 154 N. Y. 750, 49 N. E. 1102; Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961; People v. Lane, 53 App. Div. 531, 65 N. Y. Supp. 1004; Crapo v. Syracuse, 98 App. Div. 376, 90 N. Y. Supp. 553; Lewis v. New York, 106 App. Div. 454, 94 N. Y. Supp. 710; Hanrahan v. Terminal Station

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whole.[1] A few general expressions detached from their context do not reveal the purpose of the statute as a whole.[2] Not only are different parts of the same act interpreted together, but different acts which are *in pari materia* are construed together.[3] In seeking the legislative intent, words absolute in themselves and the broadest and most comprehensive language may be qualified and restricted by reference to other parts of the statute or to other acts on the same subject, or by the facts to which they relate.[4] The different parts of the same act, though contained in different sections, are to be taken and construed together as if they were all in the same

Commission, 152 App. Div. 349, 136 N. Y. Supp. 1001, reversed on other grounds 206 N. Y. 494, 100 N. E. 414; Matter of New York, 168 App. Div. 6, 153 N. Y. Supp. 747; New York v. Appleby, 168 App. Div. 503, 154 N. Y. Supp. 85; Simmons v. Burrell, 8 Misc. 388, 28 N. Y. Supp. 625, 59 N. Y. St. Rep. 554; People v. Webster, 8 Misc. 133, 28 N. Y. Supp. 646, 60 N. Y. St. Rep. 149; Gillin v. Canary, 19 Misc. 594, 4 N. Y. Ann. Cas. 200, 26 Civ. Pro. 230, 44 N. Y. Supp. 313, 78 N. Y. St. Rep. 313; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74; Matter of McKeon, 26 Misc. 464, 58 N. Y. Supp. 589; Doll v. Devery, 27 Misc. 149, 57 N. Y. Supp. 767; Matter of O'Hara, 40 Misc. 355, 82 N. Y. Supp. 293; Schinzel v. Best, 45 Misc. 455, 92 N. Y. Supp. 754; Forrest v. Forrest, 10 Barb. 46, 5 How. Pr. 125, 9 N. Y. Leg. Obs. 89, 3 Code Rep. 141; Bouton v. Brooklyn, 15 Barb. 375; St. John v. Pierce, 22 Barb. 362; Fishkill v. Fishkill, etc., Plank Road Co., 22 Barb. 634; Billings v. Baker, 28 Barb. 343; People v. Gaul, 44 Barb. 98; Williams v. People, 45 Barb. 201; Chamberlain v. Western Transp. Co., 45 Barb. 218; Beebe v. Hutton, 47 Barb. 187; Canastota, etc., Plank Road Co. v. Parkill, 50 Barb. 601; Roosevelt v. Godard, 52 Barb. 533; United States Tel. Co. v. Western Union Tel. Co., 56 Barb. 46; Brisbane v. Macomber, 56 Barb. 377; People v. Eddy, 57 Barb. 593; Griggs v. Griggs, 66 Barb. 287; Whithers v. Toulmin, 13 Civ. Pro. 1; Clark v. Lockard, 13 Civ. Pro. 278; Weiler v. Nembach, 13 Civ. Pro. 380; Van Rensselaer v. Onondaga County, 1 Cow. 443; Jerome Park Co. v. Board of Police, 11 Daly 208; Taggard v. Roosevelt, 2 E. D. Smith 100, 8 How. Pr. 141; McDermut v. Lorillard, 1 Edw. 273; People v. Beberrich, 11 How. Pr. 289; People v. Seneca County, 18 How. Pr. 461; People v. Potter, 42 How. Pr. 260; Douglas v. Douglas, 5 Hun 140; Hettenbach v. New York Cent., etc., R. Co., 18 Hun 129; Boland v. People, 25 Hun 423; Peck v. Baldwin, 58 Hun 310; Jones v. Mail, etc., Pub. Co., 80 Hun 368, 30 N. Y. Supp. 335, 62 N. Y. St. Rep. 61; In re Yates, 4 Johns. 347; Jackson v. VanZandt, 12 Johns. 169; McQueen v. Middletown Mfg. Co., 16 Johns. 5; Barnes v. Buck, 1 Lans. 269; People v. Webster, 8 Misc. 133, 28 N. Y. Supp. 646; Gillin v. Canary, 26 Civ. Pro. 230, 19 Misc. 594, 44 N. Y. Supp. 313; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74; Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 964; Matter of McKeon, 26 Misc. 464, 58 N. Y. Supp. 589; Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489; People v. Potter, 40 Misc. 485, 82 N. Y. Supp. 649; People v. Nassau County, 54 Misc. 323, 104 N. Y. Supp. 353; Manton v. South Shore Traction Co., 104 N. Y. Supp. 612; People v. Draper, 169 App. Div. 479, 154 N. Y. Supp. 1034; People v. Tiphaine, 3 Park. Crim. 241, 13 How. Pr. 74; Dean v. Gridley, 11 Wend. 167; Shoemaker v. Lansing, 17 Wend. 327; Wood v. Donaldson, 17 Wend. 550; New York v. Lord, 18 Wend. 126.

1. People v. McClave, 99 N. Y. 83, 1 N. E. 235; Bloomingdale v. Seligman, 22 Abb. N. Cas. 98, 3 N. Y. Supp. 243; Jackson v. VanZandt, 12 Johns. 169.

2. Madison Trust Co. v. Carnegie Trust Co., 215 N. Y. 475, 109 N. E. 580.

3. See infra, § 67.

4. Smith v. People, 47 N. Y. 330; In re Livingston, 121 N. Y. 94, 24 N. E. 290; People v. Allen, 20 Misc. 120

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section.[5] Though a statute is divided into many sections, each section is to be construed in connection with the others, and each is to be kept in subservience to the general intent of the whole enactment.[6] Thus, the Penal Law, consisting of hundreds of sections, is, so far as its object and purpose is concerned, construed as a single statute.[7] And the sections of the Code of Civil Procedure are read together.[8] However clear and complete in itself an isolated clause or sentence may seem to be, it is not to be detached from the other parts of the act and considered as a separate enactment.[9] In accordance with the general rule, the provisions of an original statute are construed with an amendment made thereto.[10] Likewise an enactment and a proviso thereto are construed together.[11] And those parts of a statute which have been repealed may be useful in determining the legislative intent as to those parts left in force.[12]

§ 60. All parts to be harmonized.— One of the general rules in the interpretation of statutes is, that, if possible, all parts of an enactment shall be harmonized with each other as well as with the general intent of the whole enactment.[13] This rule is closely

45 N. Y. Supp. 74; Ellis v. Hurst, 70 Misc. 122, 128 N. Y. Supp. 144, affirmed without opinion 145 App. Div. 918, 130 N. Y. Supp. 1110.

5. Corning v. McCullough, 1 N. Y. 47, 49 Am. Dec. 287.

6. Ansonia Brass, etc., Co. v. New Lamp Chimney Co., 53 N. Y. 123, 13 Am. Rep. 476.

7. People v. Pignatoro, 26 N. Y. Crim. 531, 136 N. Y. Supp. 155. And the former Penal Code received the same construction. People v. Abeel, 45 Misc. 86, 91 N. Y. Supp. 699, affirmed 100 App. Div. 516, 91 N. Y. Supp. 1107, 182 N. Y. 415, 75 N. E. 507, 3 Ann. Cas. 287, 1 L. R. A. (N. S.) 730.

8. In re Humfreville, 154 N. Y. 115, 47 N. E. 1086; Matter of McMullen, 85 Misc. 661, 148 N. Y. Supp. 1092; Peters v. Public Administrator, 1 Bradf. 200; Curtis v. Williams, 3 Dem. 63, 7 Civ. Pro. 159.

9. People v. McClave, 99 N. Y. 83, 1 N. E. 235. "It is a settled rule that the court is not compelled, indeed, it is not permitted, to give absolute and unqualified effect to a single section or clause of a statute however direct, plain and unambiguous, considered by itself, the language may be, if there are other provisions inconsistent with the literal and unrestricted interpretation of such clause or section, unless the repugnancy is irreconcilable, in which case it is the duty of the court to preserve the paramount intention, so far as it is consistent with the rules of law, although this may lead to the rejection of some subordinate and secondary provision." Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652.

10. See infra, § 114.

11. Lefevre v. Lefevre, 59 N. Y. 434. As to the construction of provisos, see infra, § 120.

12. Lemmon v. People, 20 N. Y. 562; Matter of Lampson, 22 Misc. 198, 49 N. Y. Supp. 576, affirmed 33 App. Div. 49, 53 N. Y. Supp. 531; 161 N. Y. 511, 56 N. E. 9.

13. Giles v. Lyon, 4 N. Y. 600; Cotheal v. Cotheal, 40 N. Y. 405; People v. Potter, 47 N. Y. 375; Ansonia Brass, etc., Co. v. New Lamp Chimney Co., 53 N. Y. 123, 13 Am. Rep. 476; Foote v. People, 56 N. Y. 321; In re New York, etc., Bridge, 72 N. Y. 527; People v. Hyde, 89 N. Y. 11; Hoey v. Gilroy, 129 N. Y. 132, 29 N. E. 85; Beekman v. Third Ave. R. Co., 153 N. Y. 144, 47 N. E. 277; In re Humfreville, 154 N. Y. 115, 47

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allied to the general principle that all parts of a statute shall be read together. In fact, the two rules seem to be but little more than different expressions of the same canon of interpretation. Inconsistency in the same statute is thought to be contrary to the intent of the lawmakers, and hence it is to be avoided.[14] Thus, generally a particular provision of an act is not to receive a special meaning at variance with the general purpose and spirit of the act.[15] And the grammatical construction may be changed when the meaning is plain, and it is necessary to make the change to harmonize the provisions of the act.[16] If there is an irreconcilable conflict between some of the provisions of the statute, it is the duty of the court to preserve the paramount intention, so far as it is consistent with the rules of the law, although this may lead to the rejection of some subordinate and secondary provision.[17] The effort in every case must be to ascertain and carry out the intent of the legislature; and, where the use of certain words in a statute are inconsistent with that intention, it is the duty of the court to reject those words, when, by rejecting them, the clear intent of the legislature is carried out.[18] When the repugnancy of different parts is irreconcilable, and it is doubtful which part should be retained to effectuate the legislative intent, the courts

N. E. 1086; School Board v. Board of Education, 157 N. Y. 566, 52 N. E. 583; In re Hennessy, 164 N. Y. 393, 58 N. E. 446; Davis v. Supreme Lodge, etc., 165 N. Y. 159, 58 N. E. 891; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153; Sutherland v. Mead, 80 App. Div. 103, 80 N. Y. Supp. 504; People v. Prendergast, 148 App. Div. 129, 132 N. Y. Supp. 115; Drew v. White Plains, 157 App. Div. 394, 142 N. Y. Supp. 577; Gillin v. Canary, 19 Misc. 594, 4 N. Y. Ann. Cas. 200, 26 Civ. Pro. 230, 44 N. Y. Supp. 313, 78 N. Y. St. Rep. 313; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74; People v. Lovell, 21 Misc. 570, 48 N. Y. Supp. 879; Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742; Scarangello v. Pacione, 70 Misc. 211, 126 N. Y. Supp. 714; Matter of McMullen, 85 Misc. 661, 148 N. Y. Supp. 1092; Waterford, etc., Turnpike v. People, 9 Barb. 161; Chamberlain v. Western Transp. Co., 45 Barb. 218; Whithers v. Toulmin, 13 Civ. Pro. 1; Ex parte Harrison, 4 Cow. 61; People v. Berberrich, 11 How. Pr. 289; Palmer v. Adams, 22 How. Pr. 375; People v. Potter, 42 How. Pr. 260; People v. Fanshawe, 65 Hun 77, 19 N. Y. Supp. 865; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74; Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489.

14. People v. Tax Com'rs, 23 N. Y. 224; Foote v. People, 56 N. Y. 321; Hoey v. Gilroy, 129 N. Y. 132, 29 N. E. 85; People v. Butler, 147 N. Y. 164, 41 N. E. 416; Sutherland v. Mead, 80 App. Div. 103, 80 N. Y. Supp. 504; Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742; Plummer v. Murray, 51 Barb. 201; Whithers v. Toulmin, 13 Civ. Pro. 1; Clark v. Lockard, 13 Civ. Pro. 278; Weiler v. Nembach, 13 Civ. Pro. 380; Russell v. Ostrander, 30 How. Pr. 93; People v. French, 12 Hun 254; People v. Fanshawe, 65 Hun 77, 19 N. Y. Supp. 865.

15. People v. Long Island R. Co., 194 N. Y. 130, 87 N. E. 79.

16. People v. Prendergast, 148 App. Div. 129, 132 N. Y. Supp. 115.

17. Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652; Weiler v. Newbach, 47 Hun 166, 13 N. Y. St. Rep. 451.

18. Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652.

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sometimes, as an extreme resort, solve the difficulty by applying the somewhat arbitrary rule that the last expression of the lawmaker in the act embodies the final intent, and the prior inconsistent provision is rejected.[19] The harmonizing of two different statutes is discussed in another paragraph.[20]

§ 61. Function of court and jury.— Under our system for the administration of justice, the presiding judge and the jury each have certain separate responsibilities. Broadly speaking, the facts are for the jury, and the law is for the judge. And, as a rule of general application, the construction of written documents presents a question of law for the judge. This rule, however, has its exceptions in the construction of contracts and other private documents. In construing a contract, the meaning of a word which has a technical or local meaning within the contemplation of the contracting parties may in some cases present a question for the jury, but no such qualification exists in the interpretation of statutes.[21] Though the terms used in a statute are technical or unusual, or are ambiguous, the judge should not leave their meaning to the jury. The judge must investigate and discover their meaning as best he can and then impart his judgment to the jury. By this procedure, both judge and jury remain in their appropriate sphere.[22] Even in criminal cases, the responsibility of giving the proper significance to a phrase in a statute cannot be cast by the court upon the jury.[23]

Departure from Literal Construction

§ 62. In general.— The intent of the legislature is the primary object sought in the interpretation of statutes;[24] and, to secure this object, the literal meaning of the words used must yield.[25] Whenever the intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction be contrary to its letter; for a thing which is within the letter of the statute is not within the statute

19. People v. Stout, 15 How. Pr. 159; In re New York, 72 N. Y. Supp. 378; Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489; Harrington v. Rochester, 10 Wend. 547.

20. See infra, § 170 et seq.

21. Bush v. Delaware, L., etc., R. Co., 166 N. Y. 210, 59 N. E. 838.

22. Bush v. Delaware, L., etc., R. R. Co., 166 N. Y. 210, 59 N. E. 838.

23. Carpenter v. People, 8 Barb. 603.

24. See supra, § 52.

25. Burch v. Newbury, 10 N. Y. 374; Reno v. Pinder, 20 N. Y. 298; Holmes v. Carley, 31 N. Y. 289; In re Evergreens, 47 N. Y. 216; Smith v. People, 47 N. Y. 330; People v. Potter, 47 N. Y. 375; People v. Albertson, 55 N. Y. 50; People v. Wilson, 62 N. Y. 186; In re Rochester, 66 N. Y. 413; In re New York, etc., Bridge, 72 N. Y. 527; McGaffin v. Cohoes, 74 N. Y. 387, 30

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unless it be within the intention of the makers.[26] And a case within the intention of a statute is within the statute, though an

Am. Rep. 307; Pierson v. People, 79 N. Y. 424, 35 Am. Rep. 524; People v. Davenport, 91 N. Y. 574; People v. New York Tax Com'rs, 95 N. Y. 554; People v. Lacombe, 99 N. Y. 43, 1 N. E. 599; Bell v. New York, 105 N. Y. 139, 11 N. E. 495; People v. Sharp, 107 N. Y. 427, 14 N. E. 319, 1 A. S. R. 851; People v. Angle, 109 N. Y. 564, 17 N. E. 413; Riggs v. Palmer, 115 N. Y. 506, 22 N. E. 188, 12 A. S. R. 819, 5 L. R. A. 340; Bork v. Buffalo, 127 N. Y. 64, 27 N. E. 355; Vail v. Broadway R. Co., 147 N. Y. 377, 42 N. E. 4, 30 L. R. A. 626; Blaschko v. Wurster, 156 N. Y. 437, 51 N. E. 303; Davis v. Supreme Lodge, etc., 165 N. Y. 159, 58 N. E. 891; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153; Flynn v. Prudential Ins. Co. of America, 207 N. Y. 315, 100 N. E. 794; Ewen v. Thompson-Starrett Co., 208 N. Y. 245, 101 N. E. 894; In re Meyer, 209 N. Y. 386, 103 N. E. 713, Ann. Cas. 1915A 263, L. R. A. 1915C 615; Jensen v. Southern Pac. Co., 215 N. Y. 514, 109 N. E. 600; People v. Snell, 168 App. Div. 410, 153 N. Y. Supp. 30; People v. Woods, 169 App. Div. 649, 155 N. Y. Supp. 431; People v. Roosevelt, 12 Misc. 622, 34 N. Y. Supp. 228, 68 N. Y. St. Rep. 85, affirmed 14 Misc. 531, 35 N. Y. Supp. 1085, 70 N. Y. St. Rep. 703, 149 N. Y. 574, 43 N. E. 989; Kent v. Binghamton, 40 Misc. 1, 81 N. Y. Supp. 198, reversed 90 App. Div. 553, 86 N. Y. Supp. 411; Matter of Avery, 45 Misc. 529, 92 N. Y. Supp. 974; People v. Lyon, 77 Misc. 377, 136 N. Y. Supp. 534, affirmed 154 App. Div. 266, 138 N. Y. Supp. 973; McCarthy v. New York, 84 Misc. 439, 146 N. Y. Supp. 281; Murray v. New York Cent. R. Co., 3 Abb. Dec. 339, 4 Keyes 274; Jerome Park Co. v. Board of Police, 11 Abb. N. Cas. 342; People v. Rice, 29 Abb. N. Cas. 233, 21 N. Y. Supp. 48; Bouton v. Brooklyn, 15 Barb. 375; People v. Gaul, 44 Barb. 98; McClure v. Niagara County, 50 Barb. 594; Cleveland Fire Alarm Tel. Co. v. Metropolitan Fire Com'rs, 55 Barb. 288, 7 Abb. Pr. (N. S.) 49; Barnes v. Huson, 60 Barb. 598; Weiler v. Nembach, 13 Civ. Pro. 380; Ex parte Harrison, 4 Cow. 61; People v. Asten, 6 Daly 18, affirmed 62 N. Y. 623; McDermut v. Lorillard, 1 Edw. 273; Watervliet Turnpike Co. v. McKean, 6 Hill 616; People v. Deming, 13 How. Pr. 441; People v. Hayt, 7 Hun 42; Cutting v. Cutting, 20 Hun 360; People v. Fire Com'rs, 23 Hun 319; People v. D'Oench, 44 Hun 33, 7 N. Y. St. Rep. 460; Harbeck v. Pupin, 55 Hun 336, 8 N. Y Supp. 695; Peck v. Baldwin, 58 Hun 310, 11 N. Y. Supp. 792; Bixby v New York, 61 Hun 493, 16 N. Y. Supp. 364; Matter of Stevens, 70 Hun 245, 24 N. Y. Supp. 780; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371; Jackson v. Van Zandt, 12 Johns. 169; Barnes v. Buck, 1 Lans. 269; Lucas v. Ensign, 4 N. Y. Leg. Obs. 142; Pearsall v. Elmer, 5 Redf. 181; People v. Buffalo, 57 Hun 577, 11 N Y. Supp. 314, 35 N. Y. St. Rep. 323; Weinckie v. New York Cent., etc., R. Co., 61 Hun 619, 15 N. Y. Supp. 689; McAvoy v. New York, 52 App. Div. 485, 65 N. Y. Supp. 274; Czamowsky v. Rochester, 55 App. Div. 388, 66 N. Y. Supp. 934; People v. Voorhis, 65 App. Div. 11, 72 N. Y. Supp. 295; People v. Hilliard, 85 App. Div. 507, 83 N. Y. Supp. 204; Topham v. Interurban St. R. Co., 96 App. Div. 323, 89 N. Y. Supp. 298; New York v. Lord, 18 Wend. 126.

26. Tonnele v. Hall, 4 N. Y. 140; People v. New York Cent. R. Co., 13 N. Y. 78; Holmes v. Carley, 31 N. Y. 289; Lake Shore, etc., R. Co. v. Roach, 80 N. Y. 339; Delafield v. Brady, 108 N. Y. 524, 15 N. E. 428; Riggs v. Palmer, 115 N. Y. 506, 22 N. E. 188, 12 A. S. R. 819, 5 L. R. A. 340; People v. Adams, 176 N. Y. 351, 68 N. E. 636, 98 A. S. R. 675, 63 L. R. A. 406; Topham v. Interurban St. R. Co., 96 App. Div. 323, 89 N. Y. Supp. 298; People v. Sturgis, 121 App. Div. 407, 106 N. Y. Supp. 61; People v. Friedman, 132 App. Div. 61, 116 N. Y. Supp. 538; People v. Lane, 132 App. Div. 406, 116 N. Y. Supp. 990, affirmed without opinion 196 N. Y. 520, 89 N. E. 1108; People v. Dunn, 168 App. Div. 678, 154 N. Y. Supp. 346; Lux v. New York City R. Co., 45 Misc. 222, 92 N. Y. Supp. 109; Grems v. Traver, 87 Misc. 644, 148 N. Y. Supp. 200, affirmed 164 App. Div. 968, 149 N. Y. Supp. 1085; Murray v. New York Cent. R. Co., 3 Abb. Dec. 339, 4 Keyes 274; Central Trust Co. v. New York Equipment Co., 31 Abb. N. Cas. 121, 74 Hun 405, 26 N. Y. Supp. 850, 56 N. Y. St. Rep. 643.

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exact literal construction would exclude it.[27] It is a familiar maxim of law, *Qui haeret in littera haeret in cortice,*— He who considers merely the letter of an instrument goes but skin deep into its meaning.[28] All statutes are to be construed according to their meaning, not according to the letter.[29] In statutory exposition the reason, the spirit of the law, is above mere cavil about words.[30] As was said by Plowden, "It is not the words of the law, but the internal sense of it, that makes the law, and our law (like all others) consists of two parts, viz., body and soul; the letter of the law is the body of the law, and the sense and reason of the law is the soul of the law, *quia ratio legis est anima legis.* And the law may be resembled to a nut, which has a shell and a kernel within, the letter of the law represents the shell, and the sense of it, the kernel; and as you will be no better for the nut,

White v. Wager, 32 Barb. 250, affirmed 25 N. Y. 328; Freethy v. Freethy, 42 Barb. 641; Wynkoop v. Halbut, 43 Barb. 266; Williams v. People, 45 Barb. 201; Dewey v. Goodenough, 56 Barb. 54; People v. Eddy, 57 Barb. 593; Briggs v. Easterly, 62 Barb. 51; Jackson v. Collins, 3 Cow. 89; People v. Deming, 1 Hilt. 271, 13 How. Pr. 441; Rice v. Mead, 22 How. Pr. 445; Bishop v. Barton, 2 Hun 437; Pierson v. People, 18 Hun 248; Canavan v. McAndrew, 20 Hun 47; People v. Utica Ins. Co., 15 Johns. 358, 8 Am. Dec. 243; People v. Buffalo, 57 Hun 577, 11 N. Y. Supp. 314; Donahue v. Keeshan, 91 App. Div. 602, 87 N. Y. Supp. 144; Innes v. Purcell, 2 Thomp. & C. 538, 1 Hun 318, affirmed 58 N. Y. 388; People v. Manhattan Co., 9 Wend. 351.

27. Gillet v. Moody, 3 N. Y. 479; People v. New York Cent. R. Co., 13 N. Y. 78; Olcott v. Tioga R. Co., 20 N. Y. 210, 75 Am. Dec. 393; Ayers v. Lawrence, 59 N. Y. 192; Harbeck v. Pupin, 123 N. Y. 115, 25 N. E. 311; O'Reilly v. Brooklyn Heights R. Co., 95 App. Div. 253, 89 N. Y. Supp. 41; Topham v. Interurban St. R. Co., 96 App. Div. 323, 89 N. Y. Supp. 298; Matter of Rapid Transit R. Co., 128 App. Div. 103, 112 N. Y. Supp. 619, modified 197 N. Y. 81, 90 N. E. 456, 18 Ann. Cas. 366, 36 L. R. A. (N. S.) 647; Drew v. White Plains, 157 App. Div. 394, 142 N. Y. Supp. 577; People v. Snell, 168 App. Div. 410, 153 N. Y. Supp. 30; Weltman v. Posenecker, 19 Misc. 592, 44 N. Y. Supp. 406, 26 Civ. Pro. 238, 78 N. Y. St. Rep. 406; Grems v. Traver, 87 Misc. 644, 148 N. Y. Supp. 200, affirmed 164 App. Div. 968, 149 N. Y. Supp. 1085; Fort v. Burch, 6 Barb. 60; Chandler v. Northrop, 24 Barb. 129; West v. McGurn, 43 Barb. 198; Dewey v. Goodenough, 56 Barb. 54; People v. Deming, 1 Hilt. 271, 13 How. Pr. 441; Weiler v. Newbach, 47 Hun 166, 13 N. Y. St. Rep. 451; Harbeck v. Pupin, 55 Hun 335, 8 N. Y. Supp. 695; People v. Utica Ins. Co., 15 Johns. 358, 8 Am. Dec. 243; Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652; Donahue v. Keeshan, 91 App. Div. 602, 87 N. Y. Supp. 144; Innes v. Purcell, 2 Thomp. & C. 538, 1 Hun 318, affirmed 58 N. Y. 388; Simonton v. Barrell, 21 Wend. 362. "Where a case is brought within the intent of a statute, it is within the statute even though not definitely expressed, and the court has implied authority to carry out the intent of the legislature." Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742.

28. Riggs v. Palmer, 115 N. Y. 506, 22 N. E. 188, 12 A. S. R. 819, 5 L. R. A. 340; New York Cent., etc., R. Co. v. General Electric Co., 167 App. Div. 726, 153 N. Y. Supp. 478; Pillow v. Bushnell, 5 Barb. 156; Barnes v. Huson, 60 Barb. 598; Wynkoop v. Halbut, 43 Barb. 268; Shepard v. People, 23 How. Pr. 337.

29. Pillow v. Bushnell, 5 Barb. 156; Williams v. People, 45 Barb. 201; Pierson v. People, 18 Hun 239.

30. People v. New York Edison Co., 159 App. Div. 786, 144 N. Y. Supp. 707; Weltman v. Posenecker, 19 Misc. 592, 44 N. Y. Supp. 406.

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if you make use only of the shell, so you will receive no benefit from the law if you rely upon the letter, and as the fruit and profit of the nut lies in the kernel, and not in the shell, so the fruit and profit of the law consists in the sense, more than in the letter. And it often happens, that when you know the letter, you know not the sense, for sometimes the sense is more confined and contracted than the letter, and sometimes it is more large and extensive." [31] But this doctrine does not authorize the courts to disregard arbitrarily the plain import of the language used in a statute. On the contrary, the courts will not extend a statute to cases within its intent or restrict the application of its general words, unless the context or surrounding circumstances indicates that the literal wording does not express the actual intent of the lawmakers.[32] As was said in one case,[33] "When the courts make an exception from the letter of a statute, because the subject excepted is not within its spirit and meaning, they do so to avoid a result so unreasonable or absurd as to force the conviction upon the mind that the excepted subject could not have been intended by the legislature, and that if it had been presented to that body, it would have disclaimed any intention to include it." The following test announced in Bacon's Abridgment for determining whether departure shall be made from the literal wording is sometimes approved by the courts: "In order to form a right judgment whether a case be within the equity of a statute, it is a good way to suppose the law-maker present; and that you have asked him this question, Did you intend to comprehend this case? Then you must give yourself such answer, as you imagine he, being an upright and reasonable man, would have given. If this be, that he did mean to comprehend it, you may safely hold the case to be within the equity of the statute; for while you do no more than he would have done, you do not act contrary to the statute, but in conformity thereto." [34] In the interpretation of penal statutes, which generally receive a strict interpretation,[35] it is peculiarly a sound doctrine to restrict their application to cases which are

31. See Holmes v. Carley, 31 N. Y. 289.

32. People v. Sharp, 107 N. Y. 427, 14 N. E. 319, 1 A. S. R. 851; Tompkins v. Hunter, 149 N. Y. 117, 43 N E. 532.

33. Morgan v. Hedstrom, 164 N. Y. 224, 58 N. E. 26.

34. People v. Barker, 152 N. Y. 417, 46 N. E. 875; O'Reilly v. Brooklyn Heights R. Co., 95 App. Div. 253, 89 N. Y. Supp. 41; New York Cent., etc., R. Co. v. General Electric Co., 167 App. Div. 726, 153 N. Y. Supp. 478; Donahue v. Keeshan, 91 App. Div. 602, 87 N. Y. Supp. 147.

35. See infra, § 132 et seq., as to the construction of penal statutes.

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within the spirit of the law as well as within the letter;[36] and in the interpretation of remedial statutes, which normally receive a liberal construction,[37] it is particularly proper to extend their operation to cases within the intent of the lawmakers though not covered by the exact meaning of their language.[38] Especially is a literal construction to be avoided when it results in objectionable consequences.[39]

§ 63. Illustrations of principle.— The leading example in this state of a construction placed on a statute contrary to the literal meaning of the words thereof, is *Riggs v. Palmer*,[40] in which case, it appeared that the beneficiary under a will, in order that he might prevent the revocation of the provision in his favor and to obtain the speedy enjoyment and possession of the property, wilfully murdered the testator. The Court of Appeals held that the statutes on the subject would not be interpreted literally and that the beneficiary, on account of the crime committed by him, was not entitled to the property either as donee under the will or as heir or next of kin. But many other illustrations of the general principle can be taken from the reported decisions. Thus, the term "next of kin," though strictly it does not include a surviving husband or wife, may be construed as including a surviving spouse.[41] So, too, a tailor does not violate a criminal statute prohibiting the storage, keeping or handling of dangerous combustibles in tenements, merely by keeping a quart of naphtha or gasoline for cleaning garments.[42] And a statute exempting railroad companies from liability for injuries received by passengers while on the platform of cars in violation of posted regulations, provided proper accommodations were furnished inside of the cars, is held inapplicable to street railroads operated with horse cars.[43]

36. Gay v. Seibold, 97 N. Y. 472, 49 Am. Rep. 533.

37. See infra, § 153 et seq., as to the construction of remedial statutes.

38. Gay v. Seibold, 97 N. Y. 472, 49 Am. Rep. 533; Harbeck v. Pupin, 123 N. Y. 115, 25 N. E. 311; Simonton v. Barrell, 21 Wend. 362.

39. People v. Davenport, 91 N. Y. 574; People v. New York Tax Com'rs, 95 N. Y. 554; People v. Butler, 147 N. Y. 164, 41 N. E. 416; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153; In re Meyer, 209 N. Y. 386, 103 N. E. 713, Ann. Cas. 1915A 263, L. R. A. 1915C 615; Miller v. Maujer, 82 App. Div. 419, 81 N. Y. Supp. 575; Wynkoop v. Halbut, 43 Barb. 266; Barnes v. Huson, 60 Barb. 598; Barnes v. Buck, 1 Lans. 268. As to the avoidance of objectionable consequences, see infra, §§ 77–89.

40. 115 N. Y. 506, 22 N. E. 188, 12 A. S. R. 819, 5 L. R. A. 340.

41. Dewey v. Goodenough, 56 Barb. 54.

42. People v. Friedman, 132 App. Div. 61, 116 N. Y. Supp. 538.

43. Vail v. Broadway R. Co., 147 N. Y. 377, 42 N. E. 4, 30 L. R. A. 626.

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Similarly, a statute literally imposing liability on railroad companies for injuries resulting from defects in their fences without regard to the question of negligence, was construed as imposing liability only in cases of negligence.[44] And section 834 of the Code of Civil Procedure, though its literal language would prohibit a doctor from testifying on the trial for a murder of his patient, was construed as not excluding such evidence.[45]

§ 64. Limitations placed on general words.— When the lawmakers use general language in the enactment of statutes, they cannot and do not foresee all the applications of such language, and it frequently becomes the duty of the courts in construing such statutes to limit their operation, so that they will not produce absurd, unjust or other objectionable results.[46] Language, though apparently general, may be limited in its operation and effect, where it may be gathered from the object and purpose of the statute that the language was designed to apply only to certain persons or things, or was to operate only under certain conditions.[47] General words in a statute are usually restricted in their application to the subject matter in reference to which they are employed.[48] Words absolute in themselves and language the most broad and comprehensive may be qualified and restricted by other parts of the statute, or by the facts and circumstances to which they relate.[49] As is stated in a preceding paragraph,[50] a thing which is within the letter of a statute is not within the statute unless it be within the intention of the makers. And this principle is especially applicable when the legislature has expressed itself in terms of general import.[51] For example, in construing a

44. Murray v. New York Cent. R. Co., 3 Abb. Dec. 339, 4 Keyes 274.

45. Pierson v. People, 79 N. Y. 24, 35 Am. Rep. 524.

46. Pierson v. People, 79 N. Y. 424, 35 Am. Rep. 524; Lake Shore, etc., R. Co. v. Roach, 80 N. Y. 339; People v. Davenport, 91 N. Y. 574; White v. Wagen, 32 Barb. 250, affirmed 25 N. Y. 328; Dominick v. Michael, 4 Sandf. 374.

47. Colyer v. Richard K. Fox Pub. Co., 162 App. Div. 297, 146 N. Y. Supp. 999; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74; Graham v. Van Wyck, 14 Barb. 531; Freethy v. Freethy, 42 Barb. 641; Gallatian v. Cunningham, 8 Cow. 361; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371.

48. Harlem Gaslight Co. v. New York, 33 N. Y. 309; Staten Island Water Supply Co. v. New York, 144 App. Div. 318, 128 N. Y. Supp. 1028; People v. Connolly, 164 App. Div. 163, 149 N. Y. Supp. 693; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74.

49. Pierson v. People, 79 N. Y. 424, 35 Am. Rep. 524; People v. Sharp, 107 N. Y. 427, 14 N. E. 319, 1 A. S. R. 851; In re Livingston, 121 N. Y 94, 24 N. E. 290; Colyer v. Richard K. Fox Pub. Co., 162 App. Div. 297, 146 N. Y. Supp. 999; Ellis v. Hurst, 70 Misc. 122, 128 N. Y. Supp. 144, affirmed without opinion 145 App Div. 918, 130 N. Y. Supp. 1110; Briggs v. Easterly, 62 Barb. 51.

50. See supra, § 62.

51. Delafield v. Brady. 108 N. Y. 524, 15 N. E. 428.

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statute referring to corporations, the courts may reach the conclusion that the legislature did not intend to include foreign corporations.[52] And a statute referring in general words to highways and bridges is not construed to include those within Indian reservations.[53] Thus, too, the term "notice" when used in a statute referring to legal proceedings, may be interpreted as meaning written notice.[54] Similarly, when a statute requires service on a person, it means personal service, unless some other service is specified or indicated.[55] And the word "contracts" is generally construed as meaning only those agreements which are legal and binding.[56] So, too, the word "necessary" may be construed not as meaning absolutely indispensable, but rather as expedient.[57]

§ 65. Application of general words to state.—It was a maxim of the common law that a statute in general words would not divest or take from the king any prerogative right, title or interest, unless the statute in express words extended to him.[58] Upon the independence of the American states, the prerogatives of English sovereignty became vested in the states, and the doctrine is now generally applied that a statute does not apply to the state, unless it is specifically mentioned therein or included by necessary implication.[59] Thus, it was held under early statutes that the state was not affected by a statute of limitation,[60] an insolvency act,[61] or an act for the abolishment of imprisonment for debt.[62]

52. In re Prime, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713; Matter of Avery, 45 Misc. 529, 92 N. Y. Supp. 974; Matter of Taylor, 80 Hun 589, 30 N. Y. Supp. 582; Blanchard v. Hoboken Land, etc., Co., 53 Hun 636, 6 N. Y. Supp. 279, 25 N. Y. St. Rep. 566. As to the construction of special grants and franchises to corporations, see infra, § 139.

53. Bishop v. Barton, 2 Hun 436.

54. Lane v. Cary, 19 Barb. 537; People v. Croton Aqueduct Board, 26 Barb. 240; Pearson v. Lovejoy, 53 Barb. 407, 35 How. Pr. 193; Fry v. Bennett, 16 How. Pr. 402; Jenkins v. Wild, 14 Wend. 539. But in an action on a covenant of warranty in a deed of lands from which the grantee has been evicted, it has been held that parol notice to the grantor of the commencement of the ejectment suit is sufficient. Miner v. Clark, 15 Wend. 425.

55. Rathbun v. Acker, 18 Barb. 393.

56. Assets Realization Co. v. Howard, 70 Misc. 651, 127 N. Y. Supp. 798; Phillips v. Thompson, 1 Johns. Ch. 131.

57. Stuyvesant v. New York, 7 Cow. 588; Jerome v. Ross, 7 Johns. Ch. 315, 11 Am. Dec. 484.

58. De Lancey v. Piepgras, 138 N. Y. 26, 33 N. E. 822; People v. Herkimer, 4 Cow. 345, 15 Am. Dec. 379.

59. In re Columbian Ins. Co., 3 Abb. Dec. 239; People v. Rossiter, 4 Cow. 143; People v. Herkimer, 4 Cow. 345, 15 Am. Dec. 379; Matter of Utica, 73 Hun 256, 26 N. Y. Supp. 564; Denton v. State, 72 App. Div. 248, 76 N. Y. Supp. 167.

60. People v. Gilbert, 18 Johns. 227; People v Columbia County, 10 Wend. 363. Under section 389 of the Code of Civil Procedure, the limitations apply to actions brought in the name of the people of the state or for their benefit.

61. People v. Herkimer, 4 Cow. 345, 15 Am. Dec. 379.

62. People v. Rossiter, 4 Cow. 143.

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The word "person" does not, in its ordinary or legal signification, embrace a state or government.[63] Thus, a statute authorizing devises to be made to any "person" capable by law of holding real estate, does not authorize a devise to the state or to the United States.[64] As between two possible constructions of an enactment, it is a rule of interpretation that that which is more favorable to the state is to be preferred.[65]

§ 66. General words not limited.— While it is no doubt the duty of the courts to give general terms a narrower construction in order to carry out the intent of the legislature,[66] this can be done only when some reason for the limitation is found either in the context or surrounding circumstances. If there is nothing to indicate a contrary intent on the part of the lawmakers, terms of general import are to receive their full significance.[67] Any exceptions should be created by legislative enactment, not by judicial construction.[68] A general law may, and frequently does, originate in some particular case or class of cases which is in the mind of the legislature at the time, but, so long as it is expressed in general language, the courts cannot, in the absence of express restrictions, limit its application to those cases, but must apply it to all cases that come within its terms and its general purpose and policy.[69] If the language is broad enough, and there is no other ground for narrowing its natural meaning, it should not be narrowed because in some other statutes additional words have been used to express the same idea.[70]

63. In re Fox, 52 N. Y. 530, 11 Am. Rep. 751. But, under section 37 of the General Construction Law, the term person, when used to designate a party whose property may be the subject of any offense, includes the state, or any other state, government or country which may lawfully own property in the state.

64. In re Fox, 52 N. Y. 530, 11 Am. Rep. 751.

65. Minor v. Erie R. Co., 171 N. Y. [illegible] 64 N. E. 454; People v. Miller, 94 App. Div. 567, 88 N. Y. Supp. 253.

66. See supra, § 62.

67. Levy v. Levy, 33 N. Y. 97; Bradley v. Buffalo, etc., R. Co., 34 N. Y. 427; In re Street Opening, etc., 133 N. Y. 329, 31 N. E. 103, 28 A. S. R. 640, 16 L. R. A. 180; Hudson River Tel. Co. v. Watervliet Turnpike, etc., Co., 135 N. Y. 393, 32 N. E. 148, 31 A. S. R. 838, 17 L. R. A. 674; Bucklin v. Ford, 5 Barb. 393; Neass v. Mercer, 15 Barb. 318; Heeney v. Brooklyn Benev. Soc., 33 Barb. 360, affirmed 39 N. Y. 333; Jackson v. Lervey, 5 Cow. 397; Fowler v. Wood, 78 Hun 304, 28 N. Y. Supp. 976; Van Hook v. Whitlock, 7 Paige 373.

68. Bradley v. Buffalo, etc., R. Co., 34 N. Y. 427; Hyatt v. Taylor, 51 Barb. 632; Stevenson v. New York, 1 Hun 51; People v. Havemeyer, 3 Hun 97; Demarest v. Wynkoop, 3 Johns. Ch. 129, 8 Am. Dec. 467. And see infra, § 90, as to the avoidance of judicial legislation.

69. People v. Roberts, 148 N. Y. 360, 42 N. E. 1082, 31 L. R. A. 399.

70. In re People's Rapid Transit Co. v. Dash, 125 N. Y. 93, 26 N. E. 25, 10 L. R. A. 728.

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Statutes in Pari Materia

§ 67. General rule.—As is shown in a preceding paragraph, it is the duty of the courts to construe all parts of a statute together.[71] This fundamental canon of interpretation is extended so as to require two different acts relating to the same general subject, though passed at different sessions of the legislature, to be harmonized, if possible. A later statute does not generally repeal an earlier one on the same subject, unless it contains words of express repeal or the two are so inconsistent that they cannot stand together.[72] On the contrary, the acts, being *in pari materia,* are to be construed together as though forming part of the same statute.[73] This rule requiring all acts *in pari materia* to be construed together, and the rule disapproving implied repeals, constitute, in effect, but different expressions of the same

71. See supra, § 59.

72. See infra, § 170.

73. Burch v. Newbury, 10 N. Y. 374; Oswego Starch Factory v. Dolloway, 21 N. Y. 449; Mount v. Mitchell, 31 N. Y. 356; People v. Board of Assessors, 39 N. Y. 81; Smith v. People, 47 N. Y. 330; Powers v. Shepard, 48 N. Y. 540; People v. Fields, 58 N. Y. 491; Crane v. Genin, 60 N. Y. 127; Chase v. Lord, 77 N. Y. 1; People v. Home Ins. Co., 92 N. Y. 328; Power v. Athens, 99 N. Y. 592, 2 N. E. 609; Board of Excise v. Burtis, 103 N. Y. 136, 8 N. E. 482; Lyddy v. Long Island City, 104 N. Y. 218, 10 N. E. 155; People v. New York Catholic Protectory, 106 N. Y. 604, 13 N. E. 435; New York Fire Dept. v. Atlas Steamship Co., 106 N. Y. 566, 13 N. E. 329; New York v. Eighth Ave. R. Co., 118 N. Y. 389, 23 N. E. 550; In re Livingston, 121 N. Y. 94, 24 N. E. 290; People v. Butler, 147 N. Y. 164, 41 N. E. 416; People v. Fitzgerald, 180 N. Y. 269, 73 N. E. 55; Bull v. New York City R. Co., 192 N. Y. 361, 85 N. E. 385, 19 L. R. A. (N. S.) 778; People v. Public Service Commission, 203 N. Y. 299, 96 N. E. 1011; Bank of Metropolis v. Faber, 1 App. Div. 341, 37 N. Y. Supp. 423, 72 N. Y. St. Rep. 673, affirmed 150 N. Y. 200, 44 N. E. 779; Buek v. Collis, 17 App. Div. 465, 45 N. Y. Supp. 291, 79 N. Y. St. Rep. 291; New York v. Gorman, 26 App. Div. 191, 49 N. Y. Supp. 1026; People v. Lane, 53 App. Div. 531, 65 N. Y. Supp. 1004; Matter of Hoople, 93 App. Div. 486, 87 N. Y. Supp. 842, reversed on other grounds 179 N. Y. 308, 72 N. E. 229; O'Reilly v. Brooklyn Heights R. Co., 95 App. Div. 253, 89 N. Y. Supp. 41, affirmed 179 N. Y. 450, 72 N. E. 517; Crapo v. Syracuse, 98 App. Div. 376, 90 N. Y. Supp. 553, reversed 183 N. Y. 395, 76 N. E. 465; Jefferson County v. Oswego County, 102 App. Div. 232, 92 N. Y. Supp. 709; Weir v. Barker, 104 App. Div. 112, 93 N. Y. Supp. 732; Matter of New York, 125 App. Div. 219, 109 N. Y. Supp. 652, affirmed without opinion 192 N. Y. 569, 85 N. E. 1117; Lipstein v. Provident Loan Soc., 154 App. Div. 732, 139 N. Y. Supp. 799; Ventriniglia v. Eichner, 155 App. Div. 236, 140 N. Y. Supp. 395, reversed on other grounds 213 N. Y. 147, 107 N. E. 48; Matter of Street Opening, 12 Misc. 526, 33 N. Y. Supp. 594; Gillin v. Canary, 19 Misc. 594, 26 Civ. Pro. 230, 44 N. Y. Supp. 313, 78 N. Y. St. Rep. 313; People v. Town Clerk of Bainbridge, 26 Misc. 220, 56 N. Y. Supp. 64; Matter of McKeon, 26 Misc. 464, 58 N. Y. Supp. 589; Matter of Wallace, 36 Misc. 1, 72 N. Y. Supp. 445; Matter of Avery, 45 Misc. 529, 92 N. Y. Supp. 974; Matter of Rutland, 70 Misc. 82, 128 N. Y. Supp. 94; Scarangello v. Pacione, 70 Misc. 211, 126 N. Y. Supp. 714; People v. Meyers, 71 Misc. 77, 129 N. Y. Supp. 1099; People v. Roman Catholic House of Good Shepherd, 77 Misc. 482, 136 N. Y. Supp. 617; McCutcheon v. Terminal Station Commission, 88 Misc. 601, 151 N. Y. Supp. 451, affirmed 168 App. Div. 901, 154 N. Y. Supp.

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rule.[74] It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy and was intended to be consistent in its several parts.[75] And it is not material in the application of the rule that some of the statutes have expired, and are not referred to in the other acts.[76] Contemporaneous legislation, though not strictly *in pari materia,* may be of value in ascertaining the intent of the lawmakers,[77] for the disapproval of repeals by implication is especially strong in the case of statutes passed at the same session of the legislature.[78]

711; Fort v. Burch, 6 Barb. 60; Waterford, etc., Turnpike v. People, 9 Barb. 161; Rexford v. Knight, 15 Barb. 627, affirmed 11 N Y. 308; Litchfield v. McComber, 42 Barb. 288; McClure v. Niagara County, 50 Barb. 594; Plummer v. Murray, 51 Barb. 201; People v. Eddy, 57 Barb. 593; Beach v. Reynolds, 64 Barb. 506; Gallatian v. Cunningham, 8 Cow. 361; McCartee v. Orphan Asylum Soc., 9 Cow. 437, 18 Am. Dec. 516; People v. Asten, 6 Daly 18, affirmed 62 N. Y. 623; Striker v. Kelly, 2 Denio 323; People v. Deming, 1 Hilt. 271, 13 How. Pr. 441; People v. Aichinson, 7 How. Pr. 241; People v. Coffee, 62 How. Pr. 445; Schlegel v. American Beer, etc., Co. 64 How. Pr. 196, 2 Civ. Pro. 393; People v. Havemeyer, 1 Hun 61; Mullaley v. New York, 3 Hun 661; In re Van Buren, 17 Hun 527; Blake v. Wheeler, 18 Hun 496; Pier v. George, 20 Hun 210; Brackett v. Harvey, 25 Hun 502; People v. Dennin, 35 Hun 327; Southport Plank Road Co. v. Russell, 44 Hun 626 mem., 7 N. Y. St. Rep. 596; People v. French, 51 Hun 345, 4 N. Y. Supp. 330; People v. Edwards, 56 Hun 377, 10 N. Y. Supp. 335; Kilbourne v. Sullivan County, 62 Hun 210, 16 N. Y. Supp. 507; Matter of Manning, 71 Hun 236, 24 N. Y. Supp. 1039; People v. Madill, 91 Hun 152, 36 N. Y. Supp. 1130, 11 N. Y. Crim. 136, 36 N. Y. Supp. 534, 71 N. Y. St. Rep. 692; Walsh v. Buffalo, 92 Hun 438, 36 N. Y. Supp. 997; People v. Utica Ins. Co., 15 Johns. 358, 8 Am. Dec. 243; Rogers v. Bradshaw, 20 Johns. 735; Jerome v. Ross, 7 Johns. Ch. 315, 11 Am. Dec. 484; Perkins v. Perkins, 7 Lans. 19; People v. Tiphaine, 3 Park. Crim. 241, 13 How. Pr. 74; Burnham v. Acton, 7 Robt. 395; Close v. Potter, 2 Misc. 1, 21 N. Y. Supp. 1086; Gillin v. Canary, 19 Misc. 594, 44 N. Y. Supp. 313; O'Grady v. New York Mut. Live Stock Ins. Co., 16 App. Div. 567, 44 N. Y. Supp. 946; Josh v. Marshall, 33 App. Div. 77, 53 N. Y. Supp. 419; De Grauw v. Long Island Elec. R. Co., 43 App. Div. 502, 60 N. Y. Supp. 163; McQueen v. New, 45 App. Div. 579, 61 N. Y. Supp. 464.

74. Orange County v. Ellsworth, 98 App. Div. 275, 90 N. Y. Supp. 576.

75. Gillin v. Canary, 19 Misc. 594, 44 N. Y. Supp. 313, 26 Civ. Pro. 230, 78 N. Y. St. Rep. 313.

76. Matter of McKeon, 26 Misc. 464, 58 N. Y. Supp. 589; West v. McGurn, 43 Barb. 198; New York v. Hart, 16 Hun 380.

77. Smith v. People, 47 N. Y. 330; Chase v. Lord, 77 N. Y. 1; Bank of Metropolis v. Faber, 1 App. Div. 341, 37 N. Y. Supp. 423; Matter of McKeon, 26 Misc. 464, 58 N. Y. Supp. 589; Dawson v. Horan, 51 Barb. 459; People v. French, 51 Hun 345, 4 N. Y. Supp. 330; People v. England, 91 Hun 152, 36 N. Y. Supp. 534; Rusher v. Morris, 9 How. Pr. 266. "Statutes enacted at the same session of the legislature should receive a construction, if possible, which will give effect to each. They are within the reason of the rule governing the construction of statutes in pari materia. Each is supposed to speak the mind of the same legislature, and the words used in each should be qualified and restricted, if necessary, in their construction and effect, so as to give validity and effect to every other act passed at the same session." Smith v. People, 47 N. Y. 330.

78. See infra, § 172.

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§ 68. Earlier statutes in pari materia.— When enacting a statute, the legislature is presumed to act with deliberation and with knowledge of the existing statutes on the same subject,[79] and such statutes are therefore properly considered as illuminating the intent of the legislature in passing the later act. In other words, a particular statute is construed with reference to earlier statutes *in pari materia*.[80] It is incumbent on the court, in searching for the proper interpretation of an enactment, to refer to the prior state of the law upon the matter.[81] Thus, an amendatory statute is always construed in connection with the statute it purports to amend.[82] If the earlier statute is merged in the later, as in the case of a revision, a mere change of phraseology in the later will not change the previous law, unless the new wording indicates an intention to change the old rule.[83]

§ 69. Subsequent statutes.— Subsequent acts *in pari materia* are not of the same value as prior acts in the construction of a particular statute. Though a prior enactment may be said to be within the knowledge of the legislature, the lawmakers cannot be charged with a knowledge of future laws. It is beyond the legislative power to enact a law declaring the construction to be given to an earlier statute, so as to bind the courts between the enactment of the two acts.[84] But, nevertheless, a subsequent act *in pari materia* may afford some aid in determining the

79. In re Cooper, 22 N. Y. 67; Coster v. Albany, 43 N. Y. 399; Davis v. Supreme Lodge, etc., 165 N. Y. 159, 58 N. E. 891; Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 11; Matter of Simmons, 130 App. Div. 350, 114 N. Y. Supp. 571, affirmed without opinion 195 N. Y. 573, 88 N. E. 1132; People v. Meyers, 71 Misc. 77, 129 N. Y. Supp. 1099; Waterford, etc., Turnpike v. People, 9 Barb. 161.

80. Chase v. Lord, 77 N. Y. 1; People v. New York Catholic Protectory, 106 N. Y. 604, 13 N. E. 435; East v. Brooklyn Heights R. Co., 195 N. Y. 409, 88 N. E. 751, 23 L. R. A. (N. S.) 513; People v. Lytle, 7 App. Div. 553, 40 N. Y. Supp. 153, 74 N. Y. St. Rep. 712; Ziegler v. Corwin, 12 App. Div. 60, 42 N. Y. Supp. 855; New York v. Gorman, 26 App. Div. 191, 49 N. Y. Supp. 1026; Cocheu v. Methodist Protestant Church, 32 App. Div. 239, 52 N. Y. Supp. 1019; Weir v. Barker, 104 App. Div. 112, 93 N. Y. Supp. 732; People v. Meyers, 71 Misc. 77, 129 N. Y. Supp. 1099; McCutcheon v. Terminal Station Commission, 88 Misc. 601, 151 N. Y. Supp. 451, affirmed 168 App. Div. 301, 154 N. Y. Supp. 711; Tompkins v. Purcell, 12 Hun 662; People v. James, 16 Hun 426; In re Robbins, 20 Hun 530; Strobridge v. Strobridge, 21 Hun 288; People v. Carr, 25 Hun 325, affirmed 86 N. Y. 512; Hughson v. Rochester, 49 Hun 45, 1 N. Y. Supp. 725; Matter of Manning, 71 Hun 236, 24 N. Y. Supp. 1039; People v. England, 91 Hun 152, 36 N. Y. Supp. 534; Dash v. Van Kleeck, 7 Johns. 477, 5 Am. Dec. 291; People v. Tiphaine, 3 Park. Crim. 241, 13 How. Pr. 74; Metcalfe v. Union Trust Co., 87 App. Div. 144, 84 N. Y. Supp. 183.

81. O'Rourke v. People, 3 Hun 225

82. See infra, § 114.

83. See infra, § 184.

84. See infra, § 104.

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legislative intent of the earlier statute; and, where such is the case, it should be considered.[85] Even a subsequent act which has been repealed may be useful in ascertaining the legislative intent with reference to an earlier act.[86] When it is claimed that an act furnishes some evidence as to the legislative intent in some previous enactment, the courts should be able to infer clearly that in its passage the legislative body had in mind the earlier act and the particular object aimed at in enacting it.[87] A federal statute passed after a state law will have no effect on the construction to be given the state law, though it might have had an effect had it been passed before the state law.[88]

§ 70. What statutes are in pari materia.—As a general rule, statutes which relate to the same person or thing, or to the same class of persons or things, are *in pari materia,* and are to be construed together in accordance with the doctrine stated in the foregoing paragraphs.[89] Thus, the Penal Law and the Code of Criminal Procedure, both relating to the criminal branch of the law, are *in pari materia;*[90] but the Code of Civil Procedure is not so related to either the Penal Law or the Criminal Code.[91] Special acts granting corporate power to particular corporations are construed in connection with the general corporation laws applicable to corporations of that class.[92] Similarly, the Public Service Commissions Law is *in pari materia* with other corporation laws, such as the Stock Corporation Law.[93] It has been held proper to construe together different statutes relating to

85. Chase v. Lord, 77 N. Y. 1; People v. Davenport, 91 N. Y. 574; New York Cent., etc., R. Co. v. Williams, 199 N. Y. 108, 92 N. E. 404, 139 A. S. R. 850, 35 L. R. A. (N. S.) 549; Cocheu v. Methodist Protestant Church, 32 App. Div. 239, 52 N. Y. Supp. 1019; Buckbee v. Board of Education, 115 App. Div. 366, 100 N. Y. Supp. 943, affirmed without opinion 187 N. Y. 544, 80 N. E. 1106; People v. Aichinson, 7 How. Pr. 241; People v. Brady, 26 Misc. 82, 56 N. Y. Supp. 567; Matter of McKeon, 26 Misc. 464, 58 N. Y. Supp. 589; New York v. Hart, 16 Hun 380; Matter of Manning, 71 Hun 236, 24 N. Y. Supp. 1039; People v. Madill, 91 Hun 152, 36 N. Y. Supp. 1130, 11 N. Y. Crim. 136, 36 N. Y. Supp. 534, 71 N. Y. St. Rep. 692; Livingston v. Van Ingen, 9 Johns. 507; Jackson v. Van Zandt, 12 Johns. 169; Matter of Lampson, 22 Misc. 198, 49 N. Y. Supp. 576.

86. New York v. Hart, 16 Hun 380.

87. People v. Wemple, 115 N. Y. 302, 22 N. E. 272.

88. People v. Bootman, 180 N. Y. 1, 72 N. E. 505, 2 Ann. Cas. 226.

89. Waterford, etc., Turnpike v. People, 9 Barb. 161; People v. Aichinson, 7 How. Pr. 241; Mullaley v. New York, 3 Hun 661, affirmed 62 N. Y. 636.

90. People v. Buccolieri, 91 Misc. 156, 152 N. Y. Supp. 707.

91. Perry v. People, 86 N. Y. 353; Williams v. People, 45 Barb. 201; People v. Manhattan Co., 9 Wend. 351.

92. Tyng v. Commercial Warehouse Co., 58 N. Y. 308; In re Timmis, 200 N. Y. 177, 93 N. E. 522; Matter of Buffalo Traction Co., 25 App. Div. 447, 49 N. Y. Supp. 1052.

93. People v. Public Service Commission, 203 N. Y. 299, 96 N. E. 1011.

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taxation,[94] state canals,[95] elections,[96] Indians,[97] stays,[98] executors and administrators,[99] advancements,[1] and challenges to jurors.[2]

§ 71. Statute complete in itself.— If a statute is complete in itself, it may be inferred that the legislature intended that it should not be construed in connection with other acts; and, if such is the case, other statutes though relating to the same general subject will not be permitted to affect its construction.[3] Thus, it is generally held that special statutory proceedings authorizing the condemnation of lands in certain cases and prescribing the practice therefor, are independent of the provisions in the Code of Civil Procedure on the subject of condemnation.[4]

Defective Legislation

§ 72. Awkward or inartistic language.—The courts cannot dictate the mode of expression which the legislature shall use in the wording of statutes. The legislature is the master of its own diction;[5] and, though its intent be expressed by inapt words, the judiciary may not for that reason refuse to carry its acts into effect. However crudely and unscientifically a statute may be framed, it is the function of the courts to attempt to arrive at the legislative intent and to construe the act in furtherance of such intent.[6] An obscure and bungling act is not to be construed by the same strict scientific rules as a consistent and scien-

94. Oswego Starch Factory v. Dolloway, 21 N. Y. 449; People v. Board of Assessors, 39 N. Y. 81; Ventriniglia v. Eichner, 155 App. Div. 236, 140 N. Y. Supp. 395, reversed on other grounds 213 N. Y. 147, 107 N. E. 48; People v. Davenport, 25 Hun 630.

95. Rexford v. Knight, 15 Barb. 627, affirmed 11 N. Y. 308; Rogers v. Bradshaw, 20 Johns. 735.

96. People v. Town Clerk, 26 Misc. 220, 56 N. Y. Supp. 64.

97. A series of acts for the protection of Indians in the possession of their real property, and to guard them against fraud, ought to be taken and construed as being made in pari materia, founded on the same principles. Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351.

98. Hard v. Nearing, 44 Barb. 472.

99. Matter of Avery, 45 Misc. 529, 92 N. Y. Supp. 974.

1. Beebe v. Estabrook, 79 N. Y. 246.

2. The act of April 27, 1847, providing for additional challenges to jurors was construed with the provisions of the Revised Statutes relative to challenges. Waterford, etc., Turnpike v. People, 9 Barb. 161. But statutory provisions, one applicable to civil actions, and the other to criminal cases, and the first applicable to challenges for cause, and the other to challenges without cause, can not be deemed to be in pari materia. People v. Aichinson, 7 How. Pr. 241.

3. In re Brooklyn, 148 N. Y. 107, 42 N. E. 413.

4. In re Brooklyn, 148 N. Y. 107, 42 N. E. 413; Matter of Grade Crossing Com'rs, 20 App. Div. 271, 46 N. Y. Supp. 1070; Matter of Simmons, 130 App. Div. 350, 114 N. Y. Supp. 571, affirmed without opinion 195 N. Y. 573, 88 N. E. 1132.

5. People v. Luce, 204 N. Y. 478, 97 N. E. 850, Ann. Cas. 1913C 1151.

6. Holmes v. Carley, 31 N. Y. 289; People v. Gates, 56 N. Y. 387; People

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tific statute;[7] but some meaning will be given to the words and some purpose attached to the legislative will, if it is possible to do so.[8] If, however, the enactment is so defective that the courts are unable to ascertain the intent of the lawmakers, it can have no effect.[9] Its meaning is to be determined primarily from the language used,[10] and, when that, in connection with the surrounding circumstances, fails to indicate the interpretation it shall have, the courts cannot guess or speculate as to its meaning. As has been succinctly said, the office of the courts is to bring sense out of words, not bring a sense into them.[11] And, though the courts may disregard the literal meaning of the words when necessary to harmonize the language with the legislative intent,[12] they have no arbitrary power to assume that the legislature has erroneously stated its intention and to correct supposed errors, or omissions in an enactment.[13]

§ 73. Mistakes in act.— On the one hand, it is a well-established canon of interpretation that judicial legislation is to be avoided, and that a statute is to be construed according to the natural import of the words used.[14] On the other hand, it is an equally well-settled principle in the expounding of statutes that, when

v. Kilbourn, 68 N. Y. 479; Vail v. Broadway R. Co., 147 N. Y. 377, 42 N. E. 4, 30 L. R. A. (N. S.) 626; People v. Luce, 204 N. Y. 478, 97 N. E. 850, Ann. Cas. 1913C 1151; People v. Untermyer, 153 App. Div. 176, 138 N. Y. Supp. 334; Simmons v. Burrell, 8 Misc. 388, 28 N. Y. Supp. 625. 59 N. Y. St. Rep. 554; Jewell v. Ithaca, 36 Misc. 499, 73 N. Y. Supp. 953, affirmed 72 App. Div. 220, 76 N. Y. Supp. 126; Chase v. Lord, 16 Hun 369; In re Swan, 35 Hun 625; Jones v. Mail, etc., Co., 80 Hun 368, 30 N. Y. Supp. 335; Crocker v. Crane, 21 Wend. 211, 34 Am. Dec. 228. "The whole act is singularly imperfect, obscure and bungling; but we must, looking at all the language used, the purposes to be accomplished, and other acts in pari materia, arrive, as well as we can, at the intention of the legislature." Heckmann v. Pinkney, 81 N. Y. 211.

7. Reynolds v. Bingham, 126 App. Div. 289, 110 N. Y. Supp. 520, affirmed without opinion 193 N. Y. 601, 86 N. E. 1131; Pelham v. Shinn, 129 App. Div. 20, 113 N. Y. Supp. 98, affirmed without opinion 194 N. Y. 548, 87 N. E. 1128.

8. In re Washington Park Com'rs, 52 N. Y. 131; Fitzgerald v. Quann 109 N. Y. 441, 17 N. E. 354; Jackett v. Judd, 18 How. Pr. 385.

9. In re Washington Park Com'rs, 52 N. Y. 131, wherein it was said: "It is also objected that the law is vague, uncertain and ambiguous, and that intelligent effect cannot be given to it. If this be so, it is of no effect. But court should be astute to find out some meaning to every statute, and should not impute to the legislature the doing of a senseless thing; and if an intent can be spelled out fairly from the words, effect should be given to that intent, although not artistically expressed." And see also People v. Briggs, 193 N. Y. 457, 86 N. E. 522.

10. See supra, § 54.

11. McCluskey v. Cromwell, 11 N. Y. 593; Isaac v. Denver, etc., R. Co., 12 Daly 340, affirmed 102 N. Y. 718.

12. See supra, § 62.

13. Isaac v. Denver, etc., R. Co., 12 Daly 340, affirmed 102 N. Y. 718 And see the two following paragraphs.

14. See supra, § 54, and infra, § 90

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necessary to effectuate the intent of the lawmakers, a literal construction will be avoided.[15] To give these rules their due force and to determine whether the court shall correct a mistake in a statute in order to further the legislative intent or whether it will refuse the correction and leave the rights of the parties on the plain import of the language used, is no mean task. The action of the court will depend, to a large extent, on the obviousness of the mistake claimed to exist. Unless it is fairly evident that a mistake has been made, the judiciary should not assume the existence of error and change the plain language to make it conform to supposed intent.[16] But, if the legislative intent is plain, and the mistake is clearly due to inadvertence or clerical error, the courts will adopt a construction which will remedy the defect in the legislation.[17] Thus, an erroneous reference in an act to a section of another law has been corrected by the courts.[18] And references in statutes to certain sections or titles of the Revised Statutes, where such subdivisions were not strictly a part of the Revised Statutes but were printed as such in compilations of statutes made by law publishers, have been construed as referring to such compilation.[19] Similarly, the fraction "one-third" has been construed to mean

15. See supra, § 62.

16. McCluskey v. Cromwell, 11 N. Y. 593; People v. Deyo, 181 N. Y. 425, 74 N. E. 430; Isaac v. Denver, etc., R. Co., 12 Daly 340, affirmed 102 N. Y. 718; Board of Health v. Case, 53 Hun 638, 6 N. Y. Supp. 790, 25 N. Y. St. Rep. 303.

17. Blaschko v. Wurster, 156 N. Y. 437, 51 N. E. 303; People v. Lyke, 159 N. Y. 149, 53 N. E. 802; People v. Lord, 9 App. Div. 458, 41 N. Y. Supp. 343; Matter of Deuel, 116 App. Div. 512, 101 N. Y. Supp. 1037; McKee Land, etc., Co. v. Swikehard, 23 Misc. 21, 51 N. Y. Supp. 399, affirmed 63 App. Div. 553, 71 N. Y. Supp. 1141; Hopper v. Britt, 75 Misc. 143, 135 N. Y. Supp. 187, modified 149 App. Div. 94, 133 N. Y. Supp. 778, affirmed 204 N. Y. 524, 98 N. E. 86; Watervliet Turnpike Co. v. McKean, 6 Hill 616; People v. Brie, 43 Hun 317, 4 N. Y. St. Rep. 751; Lloyd v. Thomson, 60 N. Y. Supp. 72. Where through an error of the codifier of statutes relating to the same general subject-matter conflicting provisions are introduced into a statute, effect will be given to that one of the two provisions which is in harmony with the intention of the legislature appearing from the other provisions of the statute. Weiler v. Newbach, 47 Hun 166, 13 N. Y. St. Rep. 451.

18. People v. Lord, 9 App. Div. 458, 41 N. Y. Supp. 343; People v. Transue, 74 Misc. 504, 132 N. Y. Supp. 497; Watervliet Turnpike Co. v. McKean, 6 Hill 616; People v. Lohnas, 54 Hun 604, 8 N. Y. Supp. 104. A reference in an act to a resolution of a board of estimate of a certain date was construed as applying to a resolution adopted at another date. Matter of Lockitt, 58 Misc. 5, 110 N. Y. Supp. 32. As to the incorporation of other acts by reference, see infra, § 110.

19. People v. Clute, 50 N. Y. 451, 10 Am. Rep. 508; In re Kavanagh, 125 N. Y. 418, 26 N. E. 470; St. Frances Hospital v. Schreck, 3 Dem. 225; People v. Lucas, 25 Hun 610; Brusnahan v. Manhattan College, 53 Hun 48, 5 N. Y. Supp. 613. But see Matter of Norton, 39 App. Div. 369, 57 N. Y. Supp. 407, affirmed on opinion below, 160 N. Y. 684, 55 N. E.

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"one-fourth."[20] So, too, an inaccuracy in the schedule of laws repealed by a statute has been corrected by the courts to conform to the intention of the legislature.[21] In the same way, "or" may be construed as "and," or *vice versa*,[22] and "must" and "may" are construed interchangeably.[23]

§ 74. Omissions from statute.—What has been said in the preceding paragraph with reference to the curing by the courts of defects in legislation, applies with equal force to matters claimed to have been omitted from an act. Though some matters are supplied by implication,[24] it is the general rule that an omission is to be remedied by the legislature, not by the courts.[25] The judges should not attempt to fill up a *casus omissus* and interpolate into a statute what in their opinion should have been put there by its framers.[26] If the legislature fails to insert such provisions in the law as will accomplish the result intended, their omission cannot be remedied by construction, and the law must be considered to that extent defective and inoperative.[27] If the legislature has not made a rule for a particular emergency, the courts are not to speculate as to what action might have been taken had the emergency occurred to the legislature. An omission in legislative intent is not to be supplied by the courts.[28] But, if the legislative intent is clear, an omission in an act may sometimes be considered an inadvertence and supplied by the

1098, where the intent to refer to a subsequent edition was not clear, and it was held that the reference must be limited to the first edition of the Revised Statutes.

20. Matter of Riverside Park, 95 App. Div. 552, 89 N. Y. Supp. 6.

21. People v. Lytle, 7 App. Div. 553, 40 N. Y. Supp. 153; People v. Lord, 9 App. Div. 458, 41 N. Y. Supp. 343; McKee Land, etc., Co. v. Swikehard, 23 Misc. 21, 51 N. Y. Supp. 399, affirmed, 63 App. Div. 553, 51 N. Y. Supp. 399, 71 N. Y. Supp. 1141, affirmed 173 N. Y. 630, 66 N. E. 1112. As to schedules of repeals in general, see infra, § 163.

22. See infra, § 76.

23. See supra, §§ 12–16.

24. See infra, § 75.

25. McCluskey v. Cromwell, 11 N. Y. 593; Cathcart v. Fire Dept., 26 N. Y. 529; People v. Woodruff, 32 N. Y. 355; Seeley v. Clark, 78 N. Y. 220; McKuskie v. Hendrickson, 128 N. Y. 555, 28 N. E. 650; Matter of Starbuck, 137 App. Div. 866, 122 N. Y. Supp. 584, affirmed on opinion below 201 N. Y. 531, 94 N. E. 1098; Kennahan v. New York, 162 App. Div. 364, 147 N. Y. Supp. 835; Bell v. Yates, 33 Barb. 627; Isaac v. Denver, etc., R. Co., 12 Daly 340, affirmed 102 N. Y. 718; Matter of New York Cable R. Co., 40 Hun 1; Waller v. Harris, 20 Wend. 555, 32 Am. Dec. 590.

26. In re Second Ave. M. E. Church, 66 N. Y. 395; McKuskie v. Hendrickson, 128 N. Y. 555, 28 N. E. 650; Leach v. Auwell, 154 App. Div. 170, 138 N. Y. Supp. 975; Bell v. Yates, 33 Barb. 627; Myers v. Foster, 6 Cow. 567.

27. Furey v. Gravesend, 104 N. Y. 405, 10 N. E. 698; Kennahan v. New York, 162 App. Div. 364, 147 N. Y. Supp. 835; Barbour v. Everson, 16 Abb. Pr. 366. See also People v. Borges, 6 Abb. Pr. 132.

28. People v. Woodruff, 32 N. Y. 355; Estate of Miller, 110 N. Y. 216, 18 N. E. 139, 18 N. Y. St. Rep. 226.

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courts. Thus, a statute draws with it its incidents and those matters which are necessarily implied.[29] If a substantive right is given by a statute, but the procedure for its acquisition is not prescribed, the courts will adapt some practice or supply some form of remedy.[30] Thus, a statute authorizing the commissioners of highways of certain towns to discontinue a bridge or highway existing at the time of its passage, is construed as intending that in closing the same the procedure prescribed by the Highway Law should be followed.[31] And, if the legislative intent is clear, words which have been inadvertently omitted in the amendment of a statute may be supplied by the courts.[32] For example, if, by reason of the scrivener's error, the word "not" is unintentionally omitted from an act upon its amendment, the courts will make the necessary interpolation.[33]

§ 75. Implications and incidents supplied.—While penal statutes are not usually extended by implication to cases not expressly included by their language,[34] as a general rule, a statutory enactment covers many subsidiary matters which are implied. Wherever the provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the common law.[35] The courts cannot, of course, supply matters omitted from a statute by the legislature;[36] but, whatever is necessarily implied in a statute is as much a part thereof as if written therein.[37] So, when a statute, by unavoidable implication, imposes a penalty for the doing of an act, it prohibits the doing of the act, although there are no words of express prohibition.[38] And, whenever a statute grants the power to do an act, with an unrestricted discretion as to the manner of executing the power,

29. See infra, § 75.

30. People v. Seaman, 168 App. Div. 67, 153 N. Y. Supp. 740; People v. Snell, 168 App. Div. 410, 153 N. Y. Supp. 30; Smith v. Lockwood, 13 Barb. 209; West v. McGurn, 43 Barb. 198; Van Hook v. Whitlock, 2 Edw. Ch. 304, affirmed, 7 Paige 373, 26 Wend. 43.

31. Matter of Rutland, 70 Misc. 82, 128 N. Y. Supp. 94.

32. Campbell v. Hallihan, 46 Misc. 409, 92 N. Y. Supp. 413.

33. Matter of Deuel, 116 App. Div. 512, 101 N. Y. Supp. 1037.

34. As to the construction of penal laws, see infra, §§ 132–137.

35. Baird v. New York, 96 N. Y. 567; New York v. Sands, 105 N. Y. 210, 11 N. E. 820; West v. McGurn, 43 Barb. 198; People v. Asten, 6 Daly 18, affirmed 62 N. Y. 623; Livingston v. Harris, 11 Wend. 329.

36. See supra, § 74, as to omissions.

37. People v. Meakim, 133 N. Y. 214, 30 N. E. 828; People v. Crennan, 141 N. Y. 239, 36 N. E. 187; Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489; Board of Health v. Case, 6 N. Y. Supp. 790, 25 N. Y. St. Rep. 303.

38. Griffith v. Wells, 3 Denio 226; Hallett v. Novion, 14 Johns. 273; Livingston v. Harris, 11 Wend. 329; Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961.

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all reasonable and necessary incidents in the manner of exercising the power are also granted.[39] If a statute commands an act to be done, it is understood as authorizing all that is necessary for its performance.[40] Thus, when the authority is given to a village to take the lands of owners for the purpose of laying out or widening streets, the authority includes the power to remove buildings.[41] Or, when city authorities are granted power to prevent encroachments upon and obstructions to the streets, they have the power to authorize and require the removal of obstructions.[42] Similarly, when a statute authorizes a public official to purchase certain supplies for a municipality, he is deemed to have authority to enter into executory contracts for the purchase of such supplies.[43] And, when a public office is created by the legislature, implied authority is conferred on the officer as incident to the office, to bring all suits which the proper and faithful discharge of his duties requires.[44] So, too, when a magistrate has authority to require persons to take an oath, the law impliedly gives him power to issue a subpoena and require their attendance.[45] "If a new right is created by statute, and no remedy is prescribed for the party aggrieved by the violation of such right, the court will presume that it was the intention of the legislature to give to the party aggrieved a remedy by a common law action for the violation of his statutory right, and he will be permitted to recover in an appropriate action founded upon the statute."[46] The omission of a remedy is one which may be supplied by the courts.[47] A

39. Stief v. Hart, 1 N. Y. 20; Frecking v. Rolland, 53 N. Y. 422; New York v. Sands, 105 N. Y. 210, 11 N. E. 820; People v. Davis, 78 App. Div. 570, 79 N. Y. Supp. 747; Matter of Seneca Oil Co., 153 App. Div. 594, 138 N. Y. Supp. 78, affirmed without opinion, 208 N. Y. 545, 101 N. E. 1121; Voorhees v. Martin, 12 Barb. 508; Bouton v. Brooklyn, 15 Barb. 375; People v. Eddy, 57 Barb. 593; Denton v. State, 72 App. Div. 248, 76 N. Y. Supp. 167.

40. Stief v. Hart, 1 N. Y. 20; New York v. Sands, 105 N. Y. 210, 11 N. E. 820; People v. Chapin, 105 N. Y. 309, 11 N. E. 510; Litchfield v. Bond, 105 App. Div. 229, 93 N. Y. Supp. 1016, reversed 186 N. Y. 66, 78 N. E. 719; Wakefield v. Brophy, 67 Misc. 298, 122 N. Y. Supp. 632; West v. McGurn, 43 Barb. 198; U. S. v. Wyngall, 5 Hill 16; Allen v. Sisson, 66 Hun 140, 20 N. Y. Supp. 971; Daily Register Printing, etc., Co. v. New York, 52 Hun 542, 6 N. Y. Supp. 10; Denton v. State, 72 App. Div. 248, 76 N. Y. Supp. 167.

41. Patchin v. Brooklyn, 2 Wend. 377.

42. Acme Realty Co. v. Schinasi, 215 N. Y. 495, 109 N. E. 577, L. R. A. 1916A 1176.

43. Baird v. New York, 96 N. Y. 567.

44. Rouse v. Moore, 18 Johns. 407.

45. People v. Hicks, 15 Barb. 153.

46. People v. White, 59 Barb. 666; Chisholm v. Northern Transp. Co., 61 Barb. 363; Van Hook v. Whitlock, 2 Edw. Ch. 303, affirmed, 7 Paige 373, affirmed, 26 Wend. 43; Clark v Brown, 18 Wend. 213.

47. See supra, § 74.

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corporation is not limited to the exercise of the powers specifically granted to it, but possesses in addition all such powers as are either necessarily incident to those specified or essential to the purposes and objects of its corporate existence.[48] A municipal corporation may, therefore, unless restrained by some statute, purchase and hold all such real estate as may be necessary to the proper exercise of any power specifically granted or essential to those purposes of municipal government for which it was created.[49] So, too, the power of engaging in the banking business necessarily implies the power of receiving deposits and making loans and borrowing money.[50] Likewise, when one corporation is empowered to consolidate with any other, whatever company it selects for a union and finds willing to join it, though it is not named in the statute, impliedly receives authority from the statute to enter into the consolidation.[51] A franchise granted to a corporation carried with it the right to exercise such powers as can be fairly implied as well as such as are expressly conferred.[52] But generally a grant of corporate powers or franchises includes only those expressly given and those demanded by necessary implication.[53]

§ 76. "Or" construed as "and" and vice versa.— One mistake which is occasionally made by the drafters of statutes is the use of the word "and" when "or" is intended or *vice versa*. The popular use of "or" and "and" is notoriously loose and inaccurate, and this use is reflected in the wording of statutes. When it is apparent that the legislature has erroneously used the wrong word, the courts will make the necessary change in the statute in order that it shall conform to the legislative intent.[54] In

48. Le Couteulx v. Buffalo, 33 N. Y. 333; Beers v. Phoenix Glass Co., 14 Barb. 358.

49. Le Couteulx v. Buffalo, 33 N. Y. 333.

50. Curtis v. Leavitt, 15 N. Y. 9. A corporation has implied power to borrow money for appropriate business. Beers v. Phoenix Glass Co., 14 Barb. 358.

51. In re Prospect Park, etc., R. Co., 67 N. Y. 371.

52. O'Grady v. New York Mut., etc., Ins. Co., 16 App. Div. 567, 44 N. Y. Supp. 946. As to the construction of corporate franchises, see infra, § 139.

53. Hudson River Tel. Co. v. Watervliet, etc., R. Co., 135 N. Y. 393, 32 N. E. 148, 31 A. S. R. 838, 17 L. R. A. 674; New York v. Manhattan R. Co., 143 N. Y. 1, 37 N. E. 494.

54. Oldfield v. New York, etc., R. Co., 14 N. Y. 310; Hale v. Sweet, 40 N. Y. 97; People v. Rice, 138 N. Y. 151, 33 N. E. 846; Folmsbee v. Amsterdam, 142 N. Y. 118, 36 N. E. 821; People v. Lytle, 7 App. Div. 553, 40 N. Y. Supp. 153; People v. Butler, 125 App. Div. 384, 109 N. Y. Supp. 900; Jewell v. Ithaca, 36 Misc. 499, 73 N. Y. Supp. 953, affirmed 72 App. Div. 220, 76 N. Y. Supp. 126; Ludlow v. Oswego, 25 Hun 260; People v. Keese, 27 Hun 483; People v. Holley, 12 Wend. 481.

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fact, the courts are always justified in departing from the literal meaning of words when necessary to preserve the intent of the legislature.[55] Normally, the legislature accurately expresses itself, and the words are construed according to their grammatical meaning;[56] but, when the context of the statute and the surrounding circumstances indicate that the lawmakers have made an error in the choice of words, the courts will not hesitate to construe the statute so as to effectuate the intent of the lawmakers.[57] This change in conjunctions is made only to carry out the legislative intent; the courts will never indulge in such liberty with the words of a statute where the effect of the change will be to thwart the legislative purpose.[58] When "or" is used in connection with "either," it is difficult, if not impossible, to interpret it as "and."[59]

Avoidance of Objectionable Consequences

§ 77. In general.— It is one of the fundamental rules in the interpretation of statutes that of two constructions which can be given an ambiguous statute, that which will cause objectionable results is to be avoided. The legislature is presumed to have intended that good will result from its laws, and a bad result suggests a wrong interpretation.[60] Hence a construction which will cause inconvenience,[61] hardship, injustice,[62] mischief or disaster,[63] to an innocent person, or one which is contrary to reason,[64] or equality,[65] or which produces an inconsistent,[66] ineffective,[67] unpracticable,[68] or unconstitutional[69] statute, or which imputes bad faith to the state,[70] or makes a radical innovation in a long established rule of law,[71] or tends to sacrifice great

55. See supra, § 62, as to a departure from a literal construction.

56. People v. Lytle, 7 App. Div. 553, 40 N. Y. Supp. 153; Smith v. Farley, 155 App. Div. 813, 140 N. Y. Supp. 990; Isaac v. Denver, etc., R. Co., 12 Daly 340, affirmed 102 N. Y. 718.

57. Hale v. Sweet, 40 N. Y. 97; People v. Butler, 125 App. Div. 384, 109 N. Y. Supp. 900, People v. Keese, 27 Hun 483.

58. People v. County Court, 105 App. Div. 1, 93 N. Y. Supp. 452; Blanchard v. Hoboken Land, etc., Co., 53 Hun 636 mem., 6 N. Y. Supp. 279, 25 N. Y. St. Rep. 566.

59. Smith v. Farley, 155 App. Div. 813, 140 N. Y. Supp. 990.

60. People v. Feitner, 168 N. Y. 360, 61 N. E. 280.

61. § 78.

62. § 82.

63. § 84.

64. § 79.

65. § 83.

66. § 60.

67. § 80.

68. Rosenplaenter v. Roessle, 54 N. Y. 262; Matter of Empire State Supreme Lodge, etc., 118 App. Div. 616, 53 Misc. 344, 103 N. Y. Supp 465.

69. § 86.

70. § 87.

71. § 89.

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public interests,[72] is shunned by the courts. Likewise, in the case of doubt as to its proper interpretation, the courts will hesitate to authorize the maintenance of a nuisance.[73] So, too, the courts will avoid a statutory construction which will invest a local court with greater jurisdiction than is enjoyed by the Supreme Court.[74] And, there is a presumption against an intention on the part of the legislature to oust courts of their jurisdiction, and any construction leading to such a result is to be shunned if possible.[75] To sum the matter up, the courts will avoid a construction which is contrary to the fundamental principles of good conscience and morals.[76] But, in the avoidance of objectionable results, the courts should remember that the law-making power is vested in the legislature, not in the courts,[77] and, if a statute is not ambiguous, the courts have no power to consider the evil results of its enforcement. If it is not in conflict with the constitution, the courts have no discretion but to carry out its mandate, regardless of any opinion they may have of its policy.[78] Indeed, that which is allowed by statute cannot be against public policy, for it is within the power of the legislature to say what is and what is not against public policy.[79] Grotesque and fanciful situations such as may be supposed, will not affect the construction to be given by the court, for statutes are enacted to meet the exigencies of the ordinary rather than the fanciful case.[80]

§ 78. Inconvenience.—The fact that public inconvenience will result from a proposed construction of a statute is a circumstance which indicates that such construction is against the legislative intent.[81] It is an old maxim that, "An argument drawn from inconvenience is forcible in law." [82] Where a particular applica-

72. § 88.

73. Vanderkar v. Rensselaer, etc., R. Co., 13 Barb. 390.

74. Sommese v. Florence Distilling Co., 56 Misc. 670, 107 N. Y. Supp. 630.

75. People v. Lovell, 21 Misc. 570, 48 N. Y. Supp. 879.

76. Briggs v. Easterly, 62 Barb. 51.

77. See supra, § 30.

78. Ewen v. Thompson-Starrett Co., 208 N. Y. 245, 101 N. E. 894. And see supra, § 52.

79. Williams v. Western Union Tel. Co., 9 Abb. N. Cas. 437.

80. Gaines v. New York, 215 N. Y. 533, 109 N. E. 594.

81. Rosenplaenter v. Roessle, 54 N. Y. 262; Pierson v. People, 79 N. Y. 424, 35 Am. Rep. 524; People v. Purdy, 154 N. Y. 439, 48 N. E. 821, 61 A. S. R. 624; In re Meyer, 209 N. Y. 386, 103 N. E. 713, Ann. Cas. 1915A 263, L. R. A. 1915C 615; Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742; Shepard v. People, 23 How. Pr. 337; People v. Potter, 42 How. Pr. 260; Ramchandler v. Hammond, 2 Johns. 200; Dash v. VanKleeck, 7 Johns. 503; Jackson v. VanZandt, 12 Johns. 169; Donaldson v. Wood, 22 Wend. 395.

82. Matter of Hartford, etc., R. Co., 65 How. Pr. 133.

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tion of a statute in accordance with its apparent intention will occasion great inconvenience, another and more reasonable interpretation is to be sought.[83] To illustrate, the courts will hesitate to give a statute a construction which will be likely to cause confusion and conflict in proceedings thereunder.[84] Likewise, it is not to be presumed that the legislature intended that persons having causes of action against national banks should be required to maintain such actions at the location of the bank, and the inconvenience of such practice suggests another construction.[85] Inconvenience, however, is not an objection to the validity of a statute. The legislature has the power to enact an embarrassing statute; and, if the meaning of the statute is clear, the courts have no discretion but to enforce it regardless of the consequences which may arise therefrom.[86] The courts will not put a strained and unnatural construction on a statute in order to avoid the inconvenient results accruing from the plain import of its language.[87]

§ 79. **Unreasonableness.**— It is a general rule in the interpretation of statutes that they shall receive a reasonable construction.[88] A forced, unnatural, or ridiculous construction, which might tend to bring contempt upon the administration of justice, is to be shunned.[89] An interpretation which is contrary to the

83. In re Meyer, 209 N. Y. 386, 103 N. E. 713, Ann. Cas. 1915A 263, L. R. A. 1915C 615.

84. Russell v. Ostrander, 30 How. Pr. 93; Tompkins v. Purcell, 12 Hun 662.

85. Talmage v. New York Third Nat. Bank, 91 N. Y. 531.

86. Kent v. New York Cent. R. Co., 12 N. Y. 628; Bradley v. Buffalo, etc., R. Co., 34 N. Y. 427; Rosenplaenter v. Roessle, 54 N. Y. 262; Pierson v. People, 79 N. Y. 424, 35 Am. Rep. 524; Ludewig v. Pariser, 4 Abb. N. Cas. 246; Underwood v. Irving, 3 Cow. 59; People v. Potter, 42 How. Pr. 260; Van Rensselaer v. Onondaga County, 1 Cow. 443; People v. Hopkins, 2 Thomp. & C. 586; Donaldson v. Wood, 22 Wend. 395.

87. People v. Cowles, 13 N. Y. 350.

88. Corwin v. New York, etc., R. Co., 13 N. Y. 42; People v. Gates, 56 N. Y. 387; Pierson v. People, 79 N. Y. 424, 35 Am. Rep. 524; People v. Lacombe, 99 N. Y. 43, 1 N. E. 599; Curtin v. Barton, 139 N. Y. 505, 34 N. E. 1093; People v. Adams, 176 N. Y. 351, 68 N. E. 636, 98 A. S. R. 675, 63 L. R. A. 406; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1156; People v. Hennessey, 205 N. Y. 301, 98 N. E. 516; Topham v. Interurban St. R. Co., 96 App. Div. 323, 89 N. Y. Supp. 298; Keavey v. DeRago, 20 Misc. 105, 45 N. Y. Supp. 77; Lux v. New York City R. Co., 45 Misc. 222, 92 N. Y. Supp. 109; People v. Rice, 29 Abb. N. Cas. 233, 21 N. Y. Supp. 48; Central Trust Co. v. New York Equipment Co., 31 Abb. N. Cas. 121, 74 Hun 405, 26 N. Y. Supp. 850, 56 N. Y. St. Rep. 648; Roosevelt v. Godard, 52 Barb. 533; People v. Pignatoro, 26 N. Y. Crim. 531, 136 N. Y. Supp. 155; Freeman v. People, 4 Denio 9, 47 Am. Dec. 216; People v. Potter, 36 Hun 181; Matter of Manning, 71 Hun 236, 24 N. Y. Supp. 1039; Farmers' Turnpike Road v. Coventry, 10 Johns. 389; Agricultural Soc. v. McIntyre, 17 Johns. 87; Mason v. Sudam, 2 Johns. Ch. 172.

89. People v. Pignatoro, 26 N. Y. Crim. 531, 136 N. Y. Supp. 155

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dictates of reason or leads to unreasonable results is presumed to be against the legislative intent, and some other construction should be placed on the statute, if possible without violation of its language.[90] Whenever the language of an enactment admits of two constructions, the more reasonable of the two should be adopted as that which the legislature intended.[91] For example, it is unreasonable to suppose that the legislature would commit to a fire commissioner the discretionary power of requiring slight precautions to be adopted for the avoidance of fires, and deny him the power of requiring effective precautions; and hence a construction of a statute along such lines is avoided.[92] But, if the statute is plain and unambiguous, the courts cannot revise it so as to harmonize it with their conception of reason. It is within the power of the lawmakers to enact an unreasonable law, and if they have done so in clear language, their patent intent must be effectuated by the courts.[93]

§ 80. Ineffectiveness.—The intention is not lightly to be imputed to the legislature of solemnly enacting a statute which is ineffective.[94] Hence, as between two constructions of an act, one of

90. People v. Wilson, 62 N. Y. 186; People v. Kilbourn, 68 N. Y. 479; Mangam v. Brooklyn, 98 N. Y. 585, 50 Am. Rep. 705; In re New York, etc., R. Co., 110 N. Y. 374, 18 N. E. 120; People v. Board of Health, 153 N. Y. 513, 47 N. E. 785; People v. Fitzgerald, 180 N. Y. 269, 73 N. E. 55; People v. New York, 198 N. Y. 439, 92 N. E. 18; People v. Hennessy, 205 N. Y. 301, 98 N. E. 516; Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652; Matter of Deuel, 116 App. Div. 512, 101 N. Y. Supp. 1037; Matter of McMullen, 85 Misc. 661, 148 N. Y. Supp. 1092; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371, 58 N. Y. St. Rep. 70, affirmed 150 N. Y. 269, 44 N. E. 942, 55 A. S. R. 675, 34 L. R. A. 175; Fort v. Burch, 6 Barb. 60; Roosevelt v. Godard, 52 Barb. 533; Goff v. Vedder, 12 Civ. Pro. 358; Weiler v. Nembach, 13 Civ. Pro. 380; People v. Potter, 42 How. Pr. 260; New York v. Forty-second, etc., St. R. Co., 52 How. Pr. 106; Chase v. Lord, 16 Hun 369; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371; Werner v. Rochester, 77 Hun 33, 28 N. Y. Supp. 226; Head's Iron Foundry v. Sanders, 77 Hun 432, 28 N. Y. Supp. 808; People's Trust Co. v. Smith, 82 Hun 494, 31 N. Y. Supp. 519; Dash v. VanKleeck, 7 Johns. 477, 5 Am. Dec. 291; Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351; Jerome v. Ross, 7 Johns. Ch. 315, 11 Am. Dec. 484; Varick v. Briggs, 6 Paige 323, affirmed 22 Wend. 543; Weinckie v. New York Cent., etc., R. Co., 61 Hun 619, 15 N. Y. Supp. 689, affirmed 133 N. Y. 656, 31 N. E. 625; Croner v. Cowdrey, 19 N. Y. Supp. 908; J., etc., McKechnie Brewing Co. v. Canandaigua, 15 App. Div. 139, 44 N. Y. Supp. 317; Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961; Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652; Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 14; In re New York, 72 N. Y. Supp. 378; Topham v. Interurban St. R. Co., 96 App. Div. 323, 89 N. Y. Supp. 298; Schwartzman v. Brooklyn Heights R. Co., 50 Misc. 116, 98 N. Y. Supp. 941; Matter of Stebbins, 52 Misc. 438, 103 N. Y. Supp. 563.

91. People v. Merrick, 61 Hun 396, 16 N. Y. Supp. 246.

92. People v. Kaye, 160 App. Div. 644, 146 N. Y. Supp. 398, affirmed 212 N. Y. 407, 106 N. E. 122.

93. People v. Board of Health, 153 N. Y. 513, 47 N. E. 785.

94. McClure v. Niagara County, 50 Barb. 594.

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which renders it practically nugatory and the other enables the evident purposes of the legislature to be effectuated, the latter is preferred.[95] No part of an original act or an amendment thereto is to be held inoperative, if another construction will not conflict with the plain import of the language used.[96] Thus, if a literal interpretation of an enactment tends to abrogate it, the courts will place a more liberal meaning on the language used.[97] And, if possible, such a construction will be placed on an act as will not suffer it to be eluded.[98] The legislature does not contemplate the leaving of a party without a remedy, and a construction of a statute which would have such an effect is to be avoided.[99] The courts, however, have no authority to supply omissions from statutes;[1] and if the legislature has failed to make an effective enactment, it is not within the province of the judiciary to revise the act and insert clauses which render it more enforceable.[2] There is nothing in the constitution or in any legal principle to prevent the legislature from passing an act with provisions which render it inoperative. And, when the provisions of an act are such that to make it operative would violate the declared meaning of the legislature, the courts should be astute in construing it as inoperative.[3]

95. Oldfield v. New York, etc., R. Co., 14 N. Y. 310; Juliand v. Rathbone, 39 N. Y. 369; Tillotson v. Wolcott, 48 N. Y. 188; Foote v. People, 56 N. Y. 321; Butterfield v. Rudde, 58 N. Y. 489; Farmers' Bank of Fayettville v. Hale, 59 N. Y. 53; In re Rochester, 66 N. Y. 413; People v. Kilbourn, 68 N. Y. 479; In re McMahon, 102 N. Y. 176, 6 N. E. 400, 55 Am. Rep. 796; Pooley v. Buffalo, 122 N. Y. 592, 26 N. E. 16; Harbeck v. Pupin, 123 N. Y. 115, 25 N. E. 311; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153; Lamport v. Smedley, 213 N. Y. 82, 106 N. E. 922; Matter of New York, 153 App. Div. 418, 138 N. Y. Supp. 594; People v. Lyon, 77 Misc. 377, 136 N. Y. Supp. 534, affirmed 154 App. Div. 266, 138 N. Y. Supp. 973; Doyle's Case, 19 Abb. Pr. 269; Fort v. Burch, 6 Barb. 60; People v. Brooklyn, 22 Barb. 404; Clarke v. Rochester, 24 Barb. 446; Seward v. Beach, 29 Barb. 239; McClure v. Niagara County, 50 Barb. 594; Roosevelt v. Godard, 52 Barb. 533; People v. Asten, 6 Daly 18, affirmed 62 N. Y. 623; Oldfield v. New York, etc., R. Co., 3 E. D. Smith 103; People v. Hulse, 3 Hill 309; Watervliet Turnpike Co. v. McKean, 6 Hill 616; Burch v. Newbury, 4 How. Pr. 145; McHarg v. Eastman, 35 How. Pr. 205; People v. Potter, 42 How. Pr. 260; Chase v. Lord, 16 Hun 369; People v. D'Oench, 44 Hun 33, 7 N. Y. St. Rep. 460.

96. Lyon v. Manhattan R. Co., 142 N. Y. 298, 37 N. E. 113, 25 L. R. A. 402.

97. Harbeck v. Pupin, 123 N. Y. 115, 25 N. E. 311; Barnes v. Huson, 60 Barb. 598. As to the avoidance of a literal construction, see supra, § 62.

98. Smith v. Strong, 2 Hill 241; Burch v. Newbury, 4 How. Pr. 145.

99. Matter of Freeholders, 44 Misc. 431, 90 N. Y. Supp. 110; Dickerson v. Cook, 16 Barb. 509.

1. See supra, § 74.

2. People v. Briggs, 193 N. Y. 457, 86 N. E. 522.

3. Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53.

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§ 81. Absurdity.—An absurd or frivolous purpose is not to be attributed to the legislature.[4] If a construction sought to be placed on a statute produces an absurdity, it is, as a general rule, to be discarded.[5] Thus, a statute will not receive a construction which will require the presentation of certain claims to a county treasurer, when such officer has no authority to pay them, if presented.[6] And the statutes relative to the alteration or discontinuance of highways will not be construed so as to make highways absolutely irrevocable.[7] So, too, the courts will not impute

4. People v. Lovell, 21 Misc. 570, 48 N. Y. Supp. 879; Chase v. Lord, 16 Hun 369; Head's Iron Foundry v. Sanders, 77 Hun 432, 28 N. Y. Supp. 808.

5. Curtis v. Leavitt, 15 N. Y. 9; Mullins v. People, 24 N. Y. 399; Smith v. People, 47 N. Y. 330; Pierson v. People, 79 N. Y. 424, 35 Am. Rep. 524; People v. Davenport, 91 N. Y. 574; Mangam v. Brooklyn, 98 N. Y. 585, 50 Am. Rep. 705; People v. Lacombe, 99 N. Y. 43, 1 N. E. 599; People v. Jaehne, 103 N. Y. 182, 8 N. E. 374; In re New York, etc., R. Co., 110 N. Y. 374, 18 N. E. 120; People v. Tanner, 128 N. Y. 416, 28 N. E. 364; New York v. Manhattan R. Co., 143 N. Y. 1, 37 N. E. 494; People v. Butler, 147 N. Y. 164, 41 N. E. 416; Schnaier v. Navarre Hotel, etc., Co., 182 N. Y. 83, 74 N. E. 561, 108 A. S. R. 790, 70 L. R. A. 722; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153; Flynn v. Prudential Ins. Co. of America, 207 N. Y. 315, 100 N. E. 794; Ewen v. Thompson-Starrett Co., 208 N. Y. 245, 101 N. E. 894; People v. Lord, 9 App. Div. 458, 41 N. Y. Supp. 343, 75 N. Y. St. Rep. 760; O'Grady v. New York Mut. Live Stock Ins. Co., 16 App. Div. 567, 44 N. Y. Supp. 946, 78 N. Y. St. Rep. 946; Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961; Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652; People v. Levoy, 72 App. Div. 55, 76 N. Y. Supp. 783; Miller v. Maujer, 82 App. Div. 419, 81 N. Y. Supp. 575; Wuest v. New York, 89 App. Div. 262, 85 N. Y. Supp. 933; Matter of Deuel, 116 App. Div. 512, 101 N. Y. Supp. 1037; People v. Lovell, 21 Misc. 570, 48 N. Y. Supp. 879; Matter of New York, 70 Misc. 276, 127 N. Y. Supp. 218; Wadsworth v. Thomas, 7 Barb. 445, 3 Code Rep. 227; Wynkoop v. Halbut, 43 Barb. 266; People v. Schoonmaker, 63 Barb. 44; Taylor v. Delancey, 2 Caines Cas. 142; People v. Pignatoro, 26 N. Y. Crim. 531, 136 N. Y. Supp. 155; Van Rensselaer v. Onondaga County, 1 Cow. 443; Ex parte Harrison, 4 Cow. 61; People v. Hulse, 3 Hill 309; Gilchrist v. Stevenson, 7 How. Pr. 273; New York v. Hart, 16 Hun 380, affirmed, 95 N. Y. 443; Coles v. Burns, 21 Hun 246; Kent v. Warner, 47 Hun 474, 14 N. Y. St. Rep. 342; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371, 58 N. Y. St. Rep. 70, affirmed, 150 N. Y. 269, 44 N. E. 942, 55 A. S. R. 675, 34 L. R. A. 175; Rogers v. Bradshaw, 20 Johns. 735; Matter of Manning, 71 Hun 236, 24 N. Y. Supp 1039; Weinckie v. New York Cent., etc., R. Co., 61 Hun 619, 15 N. Y. Supp. 689, affirmed, 133 N. Y. 656, 31 N. E. 625; Hurst v. New York, 55 App. Div. 68, 67 N. Y. Supp. 84; People v. Hilliard, 85 App. Div. 507, 83 N. Y. Supp. 204; Matter of Niagara, etc., P. Co., 111 App. Div. 686, 97 N. Y. Supp. 853; Miller's Estate, 110 N. Y. 216, 18 N. E. 139, 18 N. Y. St. Rep. 226; Harrington v. Rochester, 10 Wend. 547; Shoemaker v. Lansing, 17 Wend. 327; Webber v. Underhill, 19 Wend. 447. "The English courts have often indulged in what we would call judicial legislation for the reason that Parliament is not restricted by any written constitution as is the case with us. Hence, the courts in that country are at liberty to construe statutes in such a way as to make them conform to reason, justice and common sense, and they have seldom failed to find a way to give to an absurd law some semblance of reason and justice in its practical operation." Schnaier v. Navarre Hotel, etc., Co., 182 N. Y. 83, 74 N. E. 561, 108 A. S. R. 790, 70 L. R. A. 722.

6. McClure v. Niagara County, 50 Barb. 594.

7. Matter of Trask, 45 Misc. 244, 92 N. Y. Supp. 156.

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to the legislature the double design of exempting stockholders from personal liability for the debts of the corporation, and by the same law making them personally liable for the same debts.[8] To avoid an absurd construction of a statute, the courts will reject the literal meaning of the words and conserve the spirit and intent of the act over the mere letter.[9] To prevent absurdity, the courts may supply a word which is omitted from an act through inadvertence;[10] but, unless an omission is purely a clerical error or plainly an inadvertence, the courts will not supply it, but will leave its insertion to the legislature.[11] The lawmakers may enact an absurd statute; and hence an absurdity couched in unambiguous language must be enforced by the courts so far as possible.[12] It is only in the case of ambiguous statutes that the rule for the avoidance of absurdity becomes applicable.

§ 82. Hardship or injustice.— Prominent among the evil results of legislation to be avoided are constructions which cause hardship or injustice. The legislature is not lightly to be charged with enacting a statute which will operate harshly or unjustly; and, if a statute apparently has such effect, some other construction is to be sought if possible.[13] If a fair construction can be found which gives force to the whole act and to the legislative intent, and does not work an injustice, it must necessarily be

8. Corning v. McCullough, 1 N. Y. 47, 49 Am. Dec. 287.

9. Smith v. People, 47 N. Y. 330; People v. Davenport, 91 N. Y. 574; Miller v. Maujer, 82 App. Div. 419, 81 N. Y. Supp. 575; Matter of Deuel, 116 App. Div. 512, 101 N. Y. Supp. 1037; Van Loon v. Lyon, 4 Daly 149, reversed 61 N. Y. 22. And see supra, § 62, as to the avoidance of a literal construction.

10. Matter of Deuel, 116 App. Div. 512, 101 N. Y. Supp. 1037.

11. See supra, § 74.

12. "There is nothing necessarily or otherwise illegal even in an absurd statute, although a proper respect for the legislature will prevent any court from lightly imputing absurdity to any legislative enactment." New York v. Manhattan R Co., 143 N. Y. 1, 37 N. E. 494.

13. Wynehamer v. People, 13 N. Y. 378; People v. Tax Com'rs, 23 N. Y. 224; Drake v. Gilmore, 52 N. Y. 389; People v. Wilson, 62 N. Y. 186; People v. Davenport, 91 N. Y. 574; Mangam v. Brooklyn, 98 N. Y. 585, 50 Am. Rep. 705; People v. Jaehne, 103 N. Y. 182, 8 N. E. 374; McMaster v. State, 103 N. Y. 547, 9 N. E. 313; In re Rochester Electric R. Co., 123 N. Y. 351, 25 N. E. 381; Polhemus v. Fitchburg R. Co., 123 N. Y. 502, 26 N. E. 31; Suburban Rapid Transit Co. v. New York, 128 N. Y. 510, 28 N. E. 525; Hayden v. Pierce, 144 N. Y. 512, 39 N. E. 638; People v. Board of Health, 153 N. Y. 513, 47 N. E. 785; Hering v. Clement, 196 N. Y. 218, 89 N. E. 450; People v. New York, 198 N. Y. 439, 92 N. E. 18; In re Meyer, 209 N. Y. 386, 103 N. E. 713, Ann. Cas. 1915A 263, L. R. A. 1915C 615; O'Grady v. New York Mut. Live Stock Ins. Co., 16 App. Div. 567, 44 N. Y. Supp. 946, 78 N. Y. St. Rep. 946; Smith v. Syracuse, 17 App. Div. 63, 44 N. Y. Supp. 852, reversed 161 N. Y 484, 55 N. E. 1077; Lyman v. Gramercy Club, 28 App. Div. 30, 50 N. Y. Supp. 1004; Jones v. Willcox, 80 App. Div. 167, 80 N. Y. Supp. 420; Miller v. Maujer, 82 App. Div. 419, 81 N. Y. Supp. 575; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; Staten Island Water Supply Co. v. New York, 144 App.

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adopted.[14] An interpretation of an act should be avoided which would injuriously affect the rights of others, and that sense should be attached to its provisions which will harmonize its objects with the preservation and enjoyment of all existing rights.[15] If necessary for the sake of justice, general expressions will be limited, for it is thought that nothing short of the most direct and unequivocal expressions will justify the conclusion that the legislature intended an injustice.[16] The courts will disregard the letter of the law and follow its spirit, when the letter causes hardship or injustice.[17] Thus, a construction is to be avoided which enables a debtor to keep and enjoy his property in defiance of the claims of creditors.[18] Other unjust results, such as double taxation,[19] the successful perpetration of a fraud,[20] the expensive maintenance of a litigation,[21] are shunned by the courts. The desire of the judiciary to avoid an injustice frequently leads them to construe statutes as prospective and not retroactive.[22] For example, if a retroactive construction of a

Div. 318, 128 N. Y. Supp. 1028; Matter of Street Opening, 12 Misc. 526, 33 N. Y. Supp. 594; Minor v. Gurley, 39 Misc. 662, 80 N. Y. Supp. 596; Matter of O'Hara, 40 Misc. 355, 82 N. Y. Supp. 293; Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742; Matter of McMullen, 85 Misc. 661, 148 N. Y. Supp. 1092; Mortimer v. Chambers, 27 Abb. N. Cas. 289, 17 N. Y. Supp. 552, affirmed 63 Hun 335, 43 N. Y. St. Rep. 365, 17 N. Y. Supp. 874; Curtis v. Leavitt, 17 Barb. 309; Wynkoop v. Halbut, 43 Barb. 266; People v. Gaul, 44 Barb. 98; Roosevelt v. Godard, 52 Barb. 533; Hines v. Lockport, 60 Barb. 378, 41 How. Pr. 435; Briggs v. Easterly, 62 Barb. 51; Goff v. Vedder, 12 Civ. Pro. 358; Clark v. Lockard, 13 Civ. Pro. 278; People v. Albany, 6 Hill 429; Canavan v. McAndrew, 20 Hun 46; In re Lester, 21 Hun 130; Hallock v. Rumsey, 22 Hun 89; Knoff v. Ellsworth, 44 Hun 630, 8 N. Y. St. Rep. 568; People v. Krank, 46 Hun 632, 12 N. Y. St. Rep. 845; Matter of Manning, 71 Hun 236, 24 N. Y. Supp. 1039; Dash v. Van Kleeck, 7 Johns. 477, 5 Am. Dec. 291; Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351; Varick v. Briggs, 6 Paige 323, affirmed 22 Wend. 543; Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 14; Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489; New York v. Lord, 18 Wend. 126; Donaldson v. Wood, 22 Wend. 395.

14. People v. French, 52 Hun 464, 5 N. Y. Supp. 712.

15. Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489.

16. Dash v. VanKleeck, 7 Johns. 477, 5 Am. Dec. 291. As to limiting general expressions by construction, see supra, § 64.

17. People v. Davenport, 91 N. Y. 574; People v. Tax Com'rs, 95 N. Y. 554; Miller v. Maujer, 82 App. Div. 419, 81 N. Y. Supp. 575; Engel v. Fischer, 15 Abb. N. Cas. 72, 6 Civ. Pro. 307, 1 How. Pr. (N. S.) 147, 51 Super. Ct. 71, reversed 102 N. Y. 400, 7 N. E. 300, 55 Am. Rep. 818, 9 Civ. Pro. 318; Dash v. Van Kleeck, 7 Johns. 477, 5 Am. Dec. 291. As to avoiding a literal construction, see supra, § 62.

18. Farmers', etc., Nat. Bank v. Gregory, 49 Barb. 155.

19. People v. Peck, 22 Misc. 477, 50 N. Y. Supp. 820, affirmed, 32 App. Div. 624, 52 N. Y. Supp. 259.

20. Lamont v. Cheshire, 65 N. Y. 30; Engel v. Fischer, 15 Abb. N. Cas. 72, 6 Civ. Pro. 307, 1 How. Pr. (N. S.) 147, 51 Super. Ct. 71, reversed 102 N. Y. 400, 7 N. E. 300, 55 Am. Rep. 818, 9 Civ. Pro. 318.

21. Talmage v. New York Third Nat. Bank, 91 N. Y. 531.

22. Drake v. Gilmore, 52 N. Y. 389;

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statute will defeat a pending action or a pre-existing right, the courts, if possible, will construe the act as prospective only.[22] The courts, however, should not by judicial legislation relieve parties from the hardship or injustice of ill-considered legislation, which is free from ambiguity.[24] The constitution leaves much room for harsh and unjust statutes; and, if a statute whose meaning is clear does not violate the constitutional inhibitions, the courts have no discretion but to effectuate the patent intent.

§ 83. Unequal operation of statutes.—A construction of a statute is favored which makes it operate equally on all classes of persons and avoids unjust discrimination.[25] Especially is discrimination to be avoided where it is in favor of non-residents or foreign corporations. Ordinarily, the state statutes will not be interpreted so as to give non-residents or foreign corporations greater privileges or powers than are enjoyed by residents and domestic corporations.[26] As in other cases of undesirable results, if the meaning of the statute is clear, the courts cannot change it in order to avoid inequalities.[27] It is better for the legislature to make the desired changes in the law than for the courts to usurp the legislative power.

§ 84. Mischievous or disastrous results.— It is never presumed that the legislature intended unwise or injurious results to flow from its action; and where the consequences of one construction of a statute are mischievous or disastrous, a more fortunate

People v. McCall, 94 N. Y. 587; Danks v. Quackenbush, 3 Denio 594; Varick v. Briggs, 6 Paige 323, affirmed 22 Wend. 543. As to the distinction between prospective and retroactive statutes, see supra, §§ 17–29.

23. Dash v. Van Kleeck, 7 Johns. 477, 5 Am. Dec. 291.

24. Wynehamer v. People, 13 N. Y. 378; Bradley v. Buffalo, etc., R. Co., 34 N. Y. 427; Hyatt v. Taylor, 42 N. Y. 258; Rosenplaenter v. Roessle, 54 N. Y. 262; In re Brady, 69 N. Y. 215; Hering v Clement, 196 N. Y. 218, 89 N. E. 450; People v. Collin, 19 App. Div. 457, 46 N. Y. Supp. 701; Crapo v. Syracuse, 98 App. Div. 376, 90 N. Y. Supp. 553; Matter of Street Opening, 12 Misc. 526, 33 N. Y. Supp. 594; Ludewig v. Pariser, 4 Abb. N. Cas. 246; People v. Schoonmaker, 63 Barb. 44; People v. Morgan, 65 Barb. 473; Scott v. Guthrie, 25 How. Pr. 512; People v. Marine Court, 18 Hun 333; Troup v. Smith, 20 Johns. 33; Samodwitz v. Karpf, 80 App. Div. 496, 80 N. Y. Supp. 704; Waller v. Harris, 20 Wend. 555, 32 Am. Dec. 590.

25. Wynehamer v. People, 13 N. Y. 378; In re Cram, 69 N. Y. 452; People v. Feitner, 168 N. Y. 360, 61 N. E. 280; In re New York, etc., R. Co., 193 N. Y. 72, 85 N. E. 1014; In re Meyer, 209 N. Y. 386, 103 N. E. 713, Ann. Cas. 1915A 263, L. R. A. 1915C 615; People v. Hanking, 154 App. Div. 679, 139 N. Y. Supp. 436, affirmed 207 N. Y. 761, 101 N. E. 1116; Pennington v. Townsend, 7 Wend. 276.

26. Wolf v. Jordan, 22 Hun 108; Pennington v. Townsend, 7 Wend. 276

27. Wynehamer v. People, 13 N. Y. 378; Hyatt v. Taylor, 42 N. Y. 258; Luhrs v. Eimer, 80 N. Y. 171; People v. Hanking, 154 App. Div. 679, 139 N. Y. Supp. 436, affirmed 207 N. Y. 761, 101 N. E. 1116.

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construction should be sought and effectuated if possible.[28] Thus, an act will not, in the absence of explicit words, be construed so as to curtail a right of way along a navigable river, or to interfere with a highway.[29] And where infinite mischief will result from a construction which would establish a different rule from that long followed, the customary or practical interpretation will be followed, if not clearly contrary to legislative intent.[30] But the evil consequences of its enforcement cannot control the construction of a statute; if its meaning is clear, the courts must carry it out regardless of consequences.[31]

§ 85. Extraterritorial operation.— It results from the independent sovereignty of the different states that the laws of one state can have no force or effect within the territorial limits of another state, without the consent of the latter jurisdiction.[32] *Prima facie,* all laws are co-extensive, and only co-extensive, with the political jurisdiction of the lawmaking power.[33] Hence, every statute in general terms is construed as having no extraterritorial effect.[34] Thus, a mechanic's lien act has been construed as not intended for the protection of non-residents performing labor or furnishing materials without the state.[35] Similarly, a statute will not generally be construed so as to permit a town to do acts beyond its bounds.[36] The state statutes giving a cause of action for death by wrongful act are confined in their operation to deaths caused in this state.[37] But this doctrine does

28. In re Washington St. A., etc., R. Co., 115 N. Y. 442, 22 N. E. 356; Hayden v. Pierce, 144 N. Y. 512, 39 N. E. 638; People v. Purdy, 154 N. Y. 439, 48 N. E. 821, 61 A. S. R. 624; Matter of O'Hara, 40 Misc. 355, 82 N. Y. Supp. 293; Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742; Van Loon v. Lyons, 4 Daly 149, reversed 61 N. Y. 22; People v. Lambier, 5 Denio 9, 47 Am. Dec. 273; Excelsior Grain Binder Co. v. Stayner, 25 Hun 91; People v. Merrick, 61 Hun 396, 16 N. Y. Supp. 246; People v. Fanshawe, 65 Hun 77, 19 N. Y. Supp. 865; Czamowsky v. Rochester, 55 App. Div. 388, 66 N. Y. Supp. 931; Pearsall v. Elmer, 5 Redf. 181; People v. Mallory, 2 Thomp. & C. 76, 46 How. Pr. 281.

29. People v. Lambier, 5 Denio 9, 47 Am. Dec. 273; People v. Mallory, 2 Thomp. & C. 76, 46 How. Pr. 281.

30. In re Washington St. A., etc., R. Co., 115 N. Y. 442, 22 N. E. 356; Van Loon v. Lyons, 4 Daly 149, reversed 61 N. Y. 22. And see infra, § 89, as to the avoidance of a change in a long established rule.

31. People v. Fleming, 2 N. Y. 484; People v. Fornaro, 65 Misc. 457, 119 N. Y. Supp. 746.

32. Whitford v. Panama R. Co., 23 N. Y. 465; Beach v. Bay State Steamboat Co., 10 Abb. Pr. 71, 30 Barb. 433.

33. Whitford v. Panama R. Co., 23 N. Y. 465.

34. Ewen v. Thompson-Starrett Co., 208 N. Y. 245, 101 N. E. 894; Beach v. Bay State Steamboat Co., 10 Abb. Pr. 71, 30 Barb. 433; Catt v. Catt, 118 App. Div. 742, 103 N. Y. Supp. 740.

35. Birmingham Iron Foundry v. Glen Cove Starch Mfg. Co., 78 N. Y. 30.

36. North Hempstead v. Hempstead, 2 Wend. 109.

37. Whitford v. Panama R. Co., 23 N. Y. 465; Debevoise v. New York, etc., R. Co., 98 N. Y. 377, 50 Am. Rep.

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not forbid the state from investing its courts with jurisdiction over causes of action which accrue in foreign states. An act affording a remedy in the courts of this state is not extraterritorial in operation, though thereby foreign causes may be litigated. Thus, if statutes of the state where an injury is occasioned allow the survival of the cause of action, the enforcement of the right of action may be had in the courts of this state.[38] And the Workmen's Compensation Act is applied in a case where a resident of the state, employed by a corporation engaged in business in this state, is sent by the employer to perform work in another state away from the plant of the employer, but under the employer's express direction, and while engaged therein is injured.[39] But penalties created by the statutes of another state are not, as a general rule, enforceable in the courts of this state.[40]

§ 86. Unconstitutionality.— It is with great reluctance that the courts will strike down a solemn legislative enactment on the ground that it conflicts with the state or federal constitution. Every presumption is in favor of the validity of the statute, and every effort will be made to give its ambiguous language such a meaning that the act may stand without conflict with the fundamental law.[41] It is only as a last resort that the courts, after

683; Vanderwerken v. New York, etc., R. Co., 6 Abb. Pr. 239; Beach v. Bay State Steamboat Co., 10 Abb. Pr. 71, 30 Barb. 433; Peterson v. Walsh, 1 Daly 182.

38. Leonard v. Columbia Steam Nav. Co., 84 N. Y. 48, 38 Am. Rep. 491; Johnson v. Phoenix Bridge Co., 197 N. Y. 316, 90 N. E. 953.

39. Matter of Post, 216 N. Y. 544, 111 N. E. 351.

40. Langdon v. New York, etc., R. Co., 9 N. Y. Supp. 245, 29 N. Y. St. Rep. 656. As to the construction of penal laws see infra, § 132 et seq.

41. United States Trust Co. v. United States Fire Ins. Co., 18 N. Y. 199; In re Cooper, 22 N. Y. 67; People v. Denniston, 23 N. Y. 247; Shepherd v. People, 25 N. Y. 406; Whitehall First Nat. Bank v. Lamb, 50 N. Y. 95, 10 Am. Rep. 438; Kerrigan v. Force, 68 N. Y. 381; Geraty v. Reid, 78 N. Y. 64; Duryee v. New York, 96 N. Y. 477; People v. Terry, 108 N. Y. 1, 14 N. E. 815; Buffalo E. S. R. Co. v. Buffalo St. R. Co., 111 N. Y. 132, 19 N. E. 63, 2 L. R. A. 384; Curtin v. Barton, 139 N. Y. 505, 34 N. E. 1093; New York, etc., Bridge Co. v. Smith, 148 N. Y. 540, 42 N. E. 1088; People v. Dunn, 157 N. Y. 528, 52 N. E. 572, 43 L. R. A. 247; Germania Sav. Bank v. Suspension Bridge, 159 N. Y. 362, 54 N. E. 33; Bohmer v. Haffen, 161 N. Y. 390, 55 N. E. 1047; Parker v. Elmira, etc., R. Co., 165 N. Y. 274, 59 N. E. 81; Sugden v. Partridge, 174 N. Y. 87, 66 N. E. 655; People v. Lochner, 177 N. Y. 145, 69 N. E. 373, 101 A. S. R. 773; People v. Wells, 181 N. Y. 252, 73 N. E. 1025; People v. Mensching, 187 N. Y. 8, 79 N. E. 884, 10 Ann. Cas. 101, 10 L. R. A. (N. S.) 625; People v. Feitner, 191 N. Y. 88, 83 N. E. 592; Rathbone v. Wirth, 6 App. Div. 277, 40 N. Y. Supp. 535; Sun Printing, etc., Assoc. v. New York, 8 App. Div. 230, 40 N. Y. Supp. 607, 75 N. Y. St. Rep. 1, affirmed, 152 N. Y. 257, 46 N. E. 499, 37 L. R. A. 788; People v. Young, 18 App. Div. 162, 45 N. Y. Supp. 772; Koelesch v. New York, 34 App. Div. 98, 54 N. Y. Supp. 110; People v. Lane, 53 App. Div. 531, 65 N. Y. Supp.

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exhausting every resource afforded by the canons of interpretation to save the statute, will denounce it as unconstitutional. The judges will go to the verge of construction to place a meaning on the act and on the constitutional provisions so that both may operate in harmony.[42] But, if the statute is so clear and unambiguous that it can receive no reasonable interpretation except such as conflicts with constitutional provisions, the courts do not hesitate in their duty of declaring the enactment void.[43]

§ 87. Imputation of bad faith to state.— One of the evil results from legislation to be avoided by the courts, if possible, is the imputation of bad faith to the lawmakers.[44] For example, the

1004; Board of Education v. Board of Education, 76 App. Div. 355, 78 N. Y. Supp. 522, affirmed 179 N. Y. 556, 71 N. E. 1128; Jones v. Willcox, 80 App. Div. 167, 80 N. Y. Supp. 420; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; People v. MacWilliams, 91 App. Div. 176, 86 N. Y. Supp. 357; Matter of Borup, 102 App. Div. 262, 92 N. Y. Supp. 624; Matter of Deuel, 116 App. Div. 512, 101 N. Y. Supp. 1037; Hathorn v. Natural Carbonic Gas Co., 128 App. Div. 33, 112 N. Y. Supp. 374, affirmed 194 N. Y. 326, 87 N. E. 504, 128 A. S. R. 555, 16 Ann. Cas. 989, 23 L. R. A. (N. S.) 436; Matter of Rapid Transit R. Co., 128 App. Div. 103, 112 N. Y. Supp. 619, modified 197 N. Y. 81, 90 N. E. 456, 18 Ann. Cas. 366, 36 L. R. A. (N. S.) 647; People v. Stevens, 134 App. Div. 99, 118 N. Y. Supp. 969, affirmed 197 N. Y. 1, 90 N. E. 60; Hanrahan v. Terminal Station Commission, 152 App. Div. 349, 136 N. Y. Supp. 1001, reversed on other grounds, 206 N. Y. 494, 100 N. E. 414; People v. Journal Co., 158 App. Div. 326, 143 N. Y. Supp. 389, affirmed 213 N. Y. 1, 106 N. E. 759; People v. New York Edison Co., 159 App. Div. 786, 144 N. Y. Supp. 707; Stern v. Metropolitan L. Ins. Co., 169 App. Div. 217, 154 N. Y. Supp. 472; People v. Waters, 4 Misc. 1, 23 N. Y. Supp. 691; People v. Webster, 8 Misc. 133, 28 N. Y. Supp. 646, 60 N. Y. St. Rep. 149; Matter of Noble, 25 Misc. 49, 53 N. Y. Supp. 922; People v. Meyers, 71 Misc. 77, 129 N. Y. Supp. 1099; People v. Ludington, 74 Misc. 363, 131 N. Y. Supp. 550; Schieffelin v. Komfort, 86 Misc. 678, 149 N. Y. Supp. 254, affirmed, 212 N. Y. 520, 106 N. E. 675, L. R. A. 1915D 485; Hennessey v. Volkening, 30 Abb. N. Cas. 100, 22 N. Y. Supp. 528; Hadfield v. New York, 2 Abb. Pr. N. S. 95, 6 Rob. 501; Benson v. New York, 10 Barb. 223; People v. Board of Education, 13 Barb. 400; Fishkill v. Fishkill, etc., Plank Road Co., 22 Barb. 634; Roosevelt v. Godard, 52 Barb. 533; Shepherd v. People, 24 How. Pr. 388; Wood v. Mayor, etc., 34 How. Pr. 501; People v. Hayt, 7 Hun 39; People v. Webb, 16 Hun 42; Grinnell v. Maclean, 16 Hun 133; People v. McDonald, 26 Hun 156; Bocock v. Cockran, 32 Hun 521; Matter of Lorillard, 59 Hun 622, 13 N. Y. Supp. 83; People v. Wilmerding, 62 Hun 391, 17 N. Y. Supp. 102, 42 N. Y. St. Rep. 139, reversed 136 N. Y. 363, 32 N. E. 1099; Carroll v. Langan, 63 Hun 380, 18 N. Y. Supp. 290; Schenectady v. Union College, 66 Hun 179, 21 N. Y. Supp. 147; People v. Coon, 67 Hun 523, 22 N. Y. Supp. 865; New York, etc., Bridge Co. v. Skelley, 90 Hun 312, 35 N. Y. Supp. 920; Fort v. Cummings, 90 Hun 481, 36 N. Y. Supp. 36; Jackson v. Cory, 8 Johns. 385; Catlin v. Jackson, 8 Johns. 520; Livingston v. Van Ingen, 9 Johns. 507; People v. Platt, 17 Johns. 195, 8 Am. Dec. 382; Varick v. Briggs, 6 Paige 323, affirmed 22 Wend. 543; DeCamp v. Thomson, 16 App. Div. 528, 44 N. Y. Supp. 1014; People v. Reardon, 110 App. Div. 821, 97 N. Y. Supp. 535; McNamara v. Keene, 49 Misc. 452, 98 N. Y. Supp. 860.

42. Sage v. Brooklyn, 89 N. Y. 189. See the notes on the Constitution in this work.

43. New York, etc., Bridge Co. v. Skelley, 90 Hun 312, 35 N. Y. Supp. 920.

44. Sun Printing, etc., Assoc. v. New York, 8 App. Div. 230, 40 N. Y. Supp. 607, 75 N. Y. St. Rep. 1, affirmed, 152 N. Y. 257, 46 N. E. 499,

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courts, by a doubtful construction, will not impute to the legislature an intent to violate the promise of exemption by which a city was aided in obtaining a contractor on favorable terms.[45] Similarly, where the transfer of property to a charitable corporation was directly induced by a promise of exemption from taxation, which was acted upon, it will not be presumed that the legislature, in passing a general law, intended to repeal the particular exemption.[46] So, too, acts will not be construed, if possible, in such a manner as to convict the legislature of an intent to give state banks a monopoly in making usury.[47]

§ 88. Sacrifice of public interests.— It is presumed that the lawmakers will use every effort to enact laws which will promote the public interests, and hence a construction of an act which tends to sacrifice such interests is to be avoided, if possible.[48] The intention will not be imputed to the legislature of enacting a law which will be injurious to the welfare of the state, or hamper the officials of the state in the proper discharge of their duties.[49] Thus, where an act is susceptible of two interpretations, by one of which there would be a suspension, and by the other a continuance, of important political rights, the latter is clearly to be preferred.[50] Likewise, a construction which would cause great public mischief or confusion to the business interests of the state, is not to be given to a statute, unless it clearly appears that the legislature intended such a result.[51] A public statute relating to the qualifications of public officers should never be so construed as to produce inconvenience or to promote a public mischief or to render the action of the voters at the election abortive. It should, in every case when the language will fairly permit, be given such a construction as to enable the electors to act intelligently, and to accomplish with as much certainty as practicable the purpose

37 L. R. A. 788; People v. Moran, 150 App. Div. 226, 134 N. Y. Supp. 931, reversed on dissenting opinion below, 206 N. Y. 670, 99 N. E. 1115.

45. People v. Tax Com'rs, 126 App. Div. 610, 110 N. Y. Supp. 577, affirmed without opinion 195 N. Y. 618, 89 N. E. 1109.

46. People v. Raymond, 194 N. Y. 189, 87 N. E. 90.

47. Fayetteville Farmers' Bank v. Hale, 59 N. Y. 53.

48. People v. City Prison, 144 N. Y. 529, 39 N. E. 686, 27 L. R. A. 718; People v. Potter, 42 How. Pr. 260.

49. McMaster v. State, 103 N. Y. 547, 9 N. E. 313; Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742.

50. Rumsey v. People, 19 N. Y. 41.

51. People v. Davenport, 91 N. Y. 574; Hayden v. Pierce, 144 N. Y. 512, 39 N. E. 638; Close v. Potter, 2 Misc. 1, 21 N. Y. Supp. 1086; Matter of O'Hara, 40 Misc. 355, 82 N. Y. Supp. 293; Czamowsky v. Rochester, 55 App Div. 388, 66 N. Y. Supp. 931. And see supra, § 84.

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that they may have in view.[52] So, too, a statute providing for an improvement which will inure to the public benefit is sometimes given a liberal construction in furtherance of the public interests.[53] And, if a statute regulating the procedure for the disposition of public franchises is open to two constructions, that is preferred which better safeguards the public interests.[54]

§ 89. Change in long established rule.—An intention of making an innovation in a long established rule of law is not imputed to the legislature in the absence of a clear manifestation of such intention.[55] Especially is this so, when the change opens the path for hardship, injustice, absurdity, inequality, or other objectionable consequences. This principle is analogous to the doctrine that statutes in derogation of the common law are to be strictly construed.[56] Where fundamental principles are overthrown and where the general system of the laws is departed from, the legislative intention must be clearly expressed.[57] Even a practical construction which a statute has received will not be abrogated by the courts where the effect of a change in the rule would cause great mischief.[58]

Avoidance of Judicial Legislation

§ 90. In general.— By the Constitution of the state, the legislative power is vested in the senate and assembly.[59] The courts cannot make or change laws; their function is the interpretation, not the enactment or amendment, of statutes.[60] The courts

52. People v. Purdy, 154 N. Y. 439, 48 N. E. 821, 61 A. S. R. 624.

53. And see infra, § 160, as to the construction of statutes relative to public improvements.

54. Beekman v. Third Ave. R. Co., 153 N. Y. 144, 47 N. E. 277. As to the construction of grants of special franchises, see infra, § 139.

55. People v. Daniell, 50 N. Y. 274; Homnyack v. Prudential Ins. Co., 194 N. Y. 456, 87 N. E. 769; Seligman v. Friedlander, 199 N. Y. 373, 92 N. E. 1047; People v. Bromwich, 200 N. Y. 385, 93 N. E. 933; Lyman v. Gramercy Club, 28 App. Div. 30, 50 N. Y. Supp. 1004; Leach v. Auwell, 154 App. Div. 170, 138 N. Y. Supp. 975; People v. French, 25 Hun 111; Kelsey v. Jewett, 34 Hun 11; People v. Fanshawe, 65 Hun 77, 19 N. Y. Supp. 865; Yates v. Lansing, 9 Johns. 395, 6 Am. Dec. 290; Sutherland v. Mead, 80 App. Div. 103, 80 N. Y. Supp. 504. "Courts * * * presume that a radical change in the common law by statute, especially when the change affects title to property or rules of liability, will be expressed with the clearness which the importance of the subject demands, or so that its meaning is unmistakable." Seligman v. Friedlander, 199 N. Y. 373, 92 N. E. 1047. "It is a fundamental principle of the common and statute law of this and of all civilized governments that a man shall not be a judge or a juror in his own case; and the courts will not hold that the legislature have abrogated this principle, unless it is plainly declared by statute." People v. Potter, 36 Hun 181.

56. See infra, § 142.

57. Fort v. Burch, 6 Barb. 60.

58. See supra, § 84.

59. See supra, § 30.

60. Wait v. Van Allen, 22 N. Y 319; Hyatt v. Taylor, 42 N. Y. 258;

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do not sit in review of the discretion of the legislature, or determine the expediency, wisdom or propriety of legislative action in matters within the power of the legislature.[61] The legislature should not infringe the function of the courts;[62] and, on the other hand, the judiciary should refrain from usurping the lawmaking powers.[63] In short, the courts should avoid judicial legislation.[64] And especially is a construction to be refused which may be said to constitute judicial legislation and which imposes a penalty or forfeiture or which is not in harmony with or in aid of the intention of the legislative department, but is in hostility with it.[65] The courts may depart from the literal wording of an enactment when such departure is necessary to further the legislative intent;[66] but, when the intent of the lawmakers is not in doubt, the courts cannot revise the legislation or do otherwise than to carry out its plain mandate.[67] No matter what disastrous consequences may result from following the expressed intent of the legislature, the judiciary cannot avoid its duty.[68] The courts

Tompkins v. Hunter, 149 N. Y. 117, 43 N. E. 532; Hering v. Clement, 196 N. Y. 218, 89 N. E. 450; Matter of New York, 217 N. Y. 45, 111 N. E. 266; People v. Collin, 19 App. Div. 457, 46 N. Y. Supp. 701; People v. Keller, 35 App. Div. 493, 54 N. Y. Supp. 1011; Hering v. Clement, 133 App. Div. 293, 117 N. Y. Supp. 747, affirmed, 196 N. Y. 218, 89 N. E. 450; Bradley v. Huber Co., 146 App. Div. 630, 131 N. Y. Supp. 388, affirmed without opinion, 210 N. Y. 627, 105 N. E. 1102; Matter of Consolidated Gas Co., 56 Misc. 49, 106 N. Y. Supp. 407; Plumiera v. Bricka, 79 Misc. 468, 140 N. Y. Supp. 171; Suydam v. Moore, 8 Barb. 358; Curtis v. Leavitt, 17 Barb. 309; Bell v. Yates, 33 Barb. 627; People v. Brennan, 39 Barb. 651; West v. McGurn, 43 Barb. 198; Rome v. Knox, 14 How. Pr. 268; People v. Smith, 17 Hun 286; Rochester v. Close, 35 Hun 208; People v. Fitch, 89 Hun 310, 35 N. Y. Supp. 193; People v. Tiphaine, 3 Park. Crim. 241, 13 How. Pr. 74; Donaldson v. Wood, 22 Wend. 395.

61. Seymour v. Judd, 2 N. Y. 464; Hyatt v. Taylor, 42 N. Y. 258; People v. Briggs, 50 N. Y. 553; People v. Albertson, 55 N. Y. 50; Tompkins v. Hunter, 149 N. Y. 117, 43 N. E. 532; Hering v. Clement, 196 N. Y. 218, 89 N. E. 450; People v. House of Refuge, 22 App. Div. 254, 47 N. Y. Supp. 767; People v. Keller, 35 App. Div. 493, 54 N. Y. Supp. 1011; People v. Fitch, 89 Hun 310, 35 N. Y. Supp. 193. And see supra, § 52.

62. See infra, § 104.

63. Van Dyck v. McQuade, 86 N. Y. 38; Bradley v. Huber Co., 146 App. Div. 630, 131 N. Y. Supp. 388, affirmed without opinion, 210 N. Y. 627, 105 N. E. 1102; People v. Oneida, 36 Misc. 597, 73 N. Y. Supp. 1098, affirmed 170 N. Y. 105, 62 N. E. 1092.

64. People v. Brooklyn, 4 N. Y. 419, 55 Am. Dec. 266; Humphrey v. Chamberlain, 11 N. Y. 274; Newell Universal Mill Co. v. Muxlow, 115 N. Y. 170, 21 N. E. 1048; Fire Department v. Stanton, 159 N. Y. 225, 54 N. E. 28; O'Brien v. East River Bridge Co., 161 N. Y. 539, 56 N. E. 74, 48 L. R. A. 122; Matter of Thomas, 216 N. Y. 426, 110 N. E. 762; People v. House of Refuge, 22 App. Div. 254, 47 N. Y. Supp. 767; Lehigh Val. R. Co. v. Canal Board, 69 Misc. 251, 125 N. Y. Supp 227, affirmed, 146 App. Div. 151, 130 N. Y. Supp. 978, modified 204 N. Y. 471, 97 N. E. 964, Ann. Cas. 1913C 1228; In re Clark, 20 Hun 551; People v. Carter, 52 Hun 458, 5 N. Y. Supp. 507, affirmed 117 N. Y. 625, 22 N. E. 1128; People v. Morrell, 21 Wend. 563.

65. Curtis v. Leavitt, 17 Barb. 309.

66. See supra, § 62.

67. Hering v. Clement, 196 N. Y. 218, 89 N. E. 450; Rome v. Knox, 14 How. Pr. 268.

68. James v. Patten, 6 N. Y. 9, 55 Am. Dec. 376; Hering v. Clement, 196

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must take the statutes as they find them and construe them according to the canons of interpretation.[69] They should neither extend their operation beyond the bounds of the legislative intent,[70] nor restrict their obvious application.[71]

§ 91. "It would have been easy to have said so."— When it is urged that a particular statute should be construed to cover a matter not expressly mentioned in the act, the courts frequently assert that, if the legislature had intended the statute to include the matter in question, it would have been easy for them to have said so and to have expressly included it. The court reasons that the failure of the legislature to include the matter within the scope of the act indicates that its exclusion was intended, and the court refuses to insert the matter in the statute on the ground that it has no power to make such judicial legislation.[72] The argument is legitimate, but the situation sometimes is such that the argument works both ways.[73] The nature and language of an act and the surrounding circumstances may be such that it can be argued with considerable force that the failure to exclude

N. Y. 218, 89 N. E. 450; Rome v. Knox, 14 How. Pr. 268. As to the avoidance of objectionable consequences, see supra, § 77 et seq.

69. In re New York, etc., Bridge, 72 N. Y. 527; People v. Fishkill, etc., Plank Road Co., 27 Barb. 445; Tifft v. Buffalo, 8 N. Y. St. Rep. 325, reversed 7 N. Y. Supp. 633, 27 N. Y. St. Rep. 72.

70. Dickins v. New York Cent. R. Co., 23 N. Y. 158; Seeley v. Clark, 78 N. Y. 220; Tompkins v. Hunter, 149 N. Y. 117, 43 N. E. 532; Rochester v. Close, 35 Hun 208; Matter of McLarney, 90 Hun 361, 35 N. Y. Supp. 893; Tompkins v. Penn Yan First Nat. Bank, 18 N. Y. Supp. 234.

71. People v. Brennan, 39 Barb. 651.

72. Weed v. Tucker, 19 N. Y. 422; People v. Tax Com'rs, 23 N. Y. 224; People v. Woodruff, 32 N. Y. 355; Hyatt v. Taylor, 42 N. Y. 258; Gillespie v. Zittlosen, 60 N. Y. 449; Astor v. New York, 62 N. Y. 567; Polhemus v. Fitchburg R. Co., 123 N. Y. 502, 26 N. E. 31; Jensen v. Southern Pac. Co., 215 N. Y. 514, 109 N. E. 600; Matter of Thomas, 216 N. Y. 426, 110 N. E. 762; People v. Wells, 94 App. Div. 271, 87 N. Y. Supp. 1107; Weir v. Barker, 104 App. Div. 112, 93 N. Y. Supp. 732; Lester v. Otis Elevator Co., 90 Misc. 649, 153 N. Y. Supp. 1058; Fairchild v. Gwynne, 14 Abb. Pr. 121, reversed on other grounds, 16 Abb. Pr. 23; Croswell v. Crane, 7 Barb. 191; Billings v. Baker, 28 Barb. 343; Williams v. People, 45 Barb. 201; Canastota, etc., Plank Road Co. v. Parkill, 50 Barb. 601; Verplanck v. Mercantile Ins. Co., 1 Edw. Ch. 83; State v. Andre, 18 How. Pr. 159; New York, etc., R. Co. v. Cent., etc., Tel. Co., 21 Hun 261; People v. Cothran, 27 Hun 344; Reid v. New York, 68 Hun 110, 22 N. Y. Supp. 623; Head's Iron Foundry v. Sanders, 77 Hun 432, 28 N. Y. Supp. 808, 60 N. Y. St. Rep. 17; People v. Fitch, 89 Hun 310, 35 N. Y. Supp. 193; Jackson v. Lewis, 17 Johns. 475; Cayuga Bridge Co. v. Magee, 2 Paige 116, affirmed 6 Wend. 85; People v. Gilon, 66 App. Div. 25, 72 N. Y. Supp. 1041; People v. Timmerman, 79 App. Div. 565, 80 N. Y. Supp. 285; People's Trust Co. v. Pabst, 113 App. Div. 375, 98 N. Y. Supp. 1045; In re Stebbins, 52 Misc. 438, 103 N. Y. Supp. 563; Hoolihan v. Hoolihan, 119 App. Div. 925, 104 N. Y. Supp. 551; Livingston v. Harris, 11 Wend. 329; Ellice v. Winn, 12 Wend. 342; Mitchell v. Halsey, 15 Wend. 241.

73. Billings v. Baker, 28 Barb. 343; Freethy v. Freethy, 42 Barb. 641.

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expressly a certain matter from the operation of a statute indicates that it was intended to be included.[74] It is difficult to promulgate a rule which will assist in solving the problem, but it may be stated generally that, when from the language of an act and circumstances surrounding its enactment it appears that the legislature has specified the cases to which it shall apply, the failure to specify a particular case indicates that the legislature did not intend the act to cover such case; but, when the legislature by the use of general language has given an act a general application, the failure to specify particular cases which it shall cover does not warrant the court in inferring that the legislature intended their exclusion. On the contrary, in such cases, if the legislature did not intend the act to apply to such cases, "it would have been easy to have said so." The general argument is especially forceful when a party claims a construction which makes a radical innovation in the law. It is a sound inference that, in the absence of express language indicating its intention, it is presumed that the legislature did not intend to overturn long established rules of law.[75] And, also, when the construction claimed is inconvenient, absurd, or leads to other objectionable consequences, the argument is especially sound that, if the legislature had intended legislation resulting in such consequences, it would have said so in explicit language.[76]

Aids to Interpretation

§ 92. Petition to legislature preceding enactment.— It is plain that a petition presented to the legislature asking for desired legislation is not a part of the statute which is enacted pursuant to the prayer of the petitioner. If there is no ambiguity in the language of the act, the courts are confronted with no necessity which authorizes them to look outside of the statute for the effect which shall be given to it;[77] but, in the case of a statute which is ambiguous, the courts are allowed to consult the circumstances surrounding its enactment in order to ascertain its meaning.[78]

74. Matter of Carnegie Trust Co., 151 App. Div. 606, 136 N. Y. Supp. 466, affirmed 206 N. Y. 390, 99 N. E. 1096, 46 L. R. A. (N. S.) 260; Mundy v. Excise Com'rs, 9 Abb. N. Cas. 117; People v. Feitner, 71 App. Div. 479, 75 N. Y. Supp. 738.

75. Seligman v. Friedlander, 199 N. Y. 373, 92 N. E. 1047; Matter of Lampson, 22 Misc. 198, 49 N. Y. Supp. 576. And see supra, § 89.

76. Esterbrook v. Savage, 21 Hun 145. And see supra, §§ 77–89 as to the avoidance of objectionable consequences.

77. See supra, § 55.

78. See infra, § 95, as to the consideration of surrounding circumstances.

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The mischiefs to be cured are of importance in determining the meaning to be attached to an ambiguous statute;[79] and these mischiefs are likely to be well explained in a petition asking for curative legislation. Hence, though there is but slight judicial authority on the question,[80] it is fairly evident that a petition to the legislature is a proper matter for consideration in the interpretation of an ambiguous statute, at least to the extent of ascertaining the mischief it was designed to remedy.

§ 93. **Preamble.**—While the preamble is no part of a statute,[81] it frequently contains recitals which illuminate the purpose and intent of the enactment. In fact, it is said to be the key which opens the mind of the lawmakers as to the mischiefs which are intended to be remedied by the statute.[82] But its language cannot control the enacting part of a statute which is clear and unambiguous in its terms.[83] Thus, the general words of an enacting clause of a statute are not to be limited by particular words which are inserted in the preamble.[84] And, similarly, words of limited operation in the enacting clause are not to be extended by the language of the preamble.[85] It is, however, considered as an aid to interpretation when the body of the act is not free from ambiguity.[86] But, if the preamble is to be used as an aid in

79. See supra, § 56.

80. In Furman v. New York, 5 Sandf. 16, affirmed 10 N. Y. 567, it was held that the petition to the legislature was proper as a resort to ascertain the intention of the legislature. And see Ogden v. Strong, 2 Paine 584, 18 Fed. Cas. No. 10,460, where consideration was given by a federal court to a petition presented for the passage of an act of Congress.

81. Pumpelly v. Owego, 45 How. Pr. 219; Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351. Inasmuch as the preamble is not a part of the statute, its omission upon a revision of the statutes is not evidence of an intention to change the construction which the statute had received. Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351.

82. Jackson v. Gilchrist, 15 Johns. 89; Furman v. New York, 5 Sandf. 16, affirmed 10 N. Y. 567.

83. Neumann v. New York, 137 App. Div. 55, 122 N. Y. Supp. 62; Hatch v. American Union Tel. Co., 9 Abb. N. Cas. 223; Constantine v. Van Winkle, 6 Hill 177; Jackson v. Gilchrist, 15 Johns. 89; People v. Utica Ins. Co., 15 Johns. 358, 8 Am. Dec. 243; Hart v. Albany, 9 Wend. 571, 24 Am. Dec. 165.

84. Jackson v. Gilchrist, 15 Johns. 89. Strong words in the enacting part of a statute may extend it beyond the preamble, and make it applicable to further mischiefs than those mentioned in the preamble. Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351.

85. Neumann v. New York, 137 App. Div. 55, 122 N. Y. Supp. 62; Hatch v. American Union Tel. Co., 9 Abb. N. Cas. 223.

86. People v. Sharp, 107 N. Y. 427, 14 N. E. 319, 1 A. S. R. 851; Hatch v. American Union Tel. Co., 9 Abb. N. Cas. 223; Gallatian v. Cunningham, 8 Cow. 361; Constantine v. Van Winkle, 6 Hill 177; Pumpelly v. Owego, 45 How. Pr. 219; Jackson v. Gilchrist, 15 Johns. 89; Furman v. New York, 5 Sandf. 16, affirmed 10 N. Y. 567. The fact that the preamble of a statute chartering an insurance company declares that the company should be "liberally encouraged," is not suffi-

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arriving at the legislative intent, the whole of it must be used, not merely a part.[87]

§ 94. Title.— The title of a statute is, strictly speaking, not a part of the act.[88] Indeed, a title is unnecessary except in the enactment of private and local acts.[89] If the legislative intent, as expressed in the statute, is clear and unambiguous, the title is not to be considered in its interpretation.[90] The substance of a plain act can be neither extended nor restricted by the language of the title.[91] If, however, the legislative intent is not clearly expressed in the enactment, the courts may resort to the title as an aid in its interpretation.[92] Especially is the title of a private or local act helpful in determining its meaning, for the subject of such a law must be expressed in the title in order to preserve its

cient ground for holding that the charter of such company authorizes it to engage in the business of banking, where nothing in the enumerated powers of the corporation shows any intent on the part of the legislature to grant this additional power. People v. Utica Ins. Co., 15 Johns. 358, 8 Am. Dec. 243.

87. People v. Utica Ins. Co., 15 Johns. 358, 8 Am. Dec. 243.

88. People v. Molyneux, 40 N. Y. 113; Jones v. Sheldon, 50 N. Y. 477; In re New York, etc., Bridge, 72 N. Y. 527; People v. Coleman, 121 N. Y. 542, 25 N. E. 51; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; People v. Draper, 169 App. Div. 479, 154 N. Y. Supp. 1034; Pumpelly v. Owego, 45 How. Pr. 219.

89. See supra, §§ 38, 39.

90. People v. Molyneux, 40 N. Y. 113; Goodrich v. Russell, 42 N. Y. 177; In re New York, etc., Bridge, 72 N. Y. 527; Neumann v. New York, 137 App. Div. 55, 122 N. Y. Supp. 62; People v. Willett, 164 App. Div. 1, 149 N. Y. Supp. 348, affirmed 213 N. Y. 368, 107 N. E. 707; Guaranty Trust Co. v. Troy Steel Co., 33 Misc. 484, 68 N. Y. Supp. 915; People v. Molineux, 53 Barb. 9, affirmed 40 N. Y. 113; Howe's Cave Lime Co. v. Howe's Cave Assoc., 88 Hun 554, 34 N. Y. Supp. 848; People v. Fitch, 89 Hun 310, 35 N. Y. Supp. 193.

91. In re New York, etc., Bridge, 72 N. Y. 527; Bell v. New York, 105 N. Y. 139, 11 N. E. 495; People v. O'Brien, 111 N. Y. 1, 18 N. E. 692, 7 A. S. R. 684, 2 L. R. A. 255; Bovi v. Hess, 123 App. Div. 389, 107 N. Y. Supp. 1001; Neumann v. New York, 137 App. Div. 55, 122 N. Y. Supp. 62; People v. Willett, 164 App. Div. 1, 149 N. Y. Supp. 348, affirmed 213 N. Y. 368, 107 N. E. 707; People v. O'Neil, 54 Hun 610, 8 N. Y. Supp. 123. A statute is not to be deemed a private or local act because its title so indicates. The character of it is to be determined by its provisions and not from its title. People v. Stephens, 2 Abb. Pr. (N. S.) 348. "There is no doubt of the propriety of referring to the title of an act for the purpose of explaining its terms, when they are not clear; but I think it will be difficult to find authority for such reference for the purpose of showing that the power conferred thereby was intended to be conferred, not upon the party to whom the power was in terms granted, but upon some other person or authority." Russel v. New York, 2 Denio 461.

92. Jones v. Sheldon, 50 N. Y. 477; Ayers v. Lawrence, 59 N. Y. 192; In re New York, etc., Bridge, 72 N. Y. 527; People v. Davenport, 91 N. Y. 574; People v. Spicer, 99 N. Y. 225, 1 N. E. 680; Bell v. New York, 105 N. Y. 139, 11 N. E. 495; People v. O'Brien, 111 N. Y. 1, 18 N. E. 692, 7 A. S. R. 684, 2 L. R. A. 255; People v. Coleman, 121 N. Y. 542, 25 N. E. 51; Drake v. State, 144 N. Y. 414, 39 N. E. 342; People v. Van Wyck, 157 N. Y. 495, 52 N. E. 559; People v. England, 16 App. Div. 97, 45 N. Y. Supp. 12, 79 N. Y. St. Rep. 12; Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961; Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 14; Rosin v. Lidgerwood Mfg.

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constitutionality.[93] For the purpose of determining whether an act is intended to be retrospective in its operation, reference is sometimes had to the title.[94] The circumstance that the title of an act states that it is "supplementary" to another act, indicates strongly that the latter act is not thereby impliedly repealed.[95]

§ 95. History of times, conditions of country, and surrounding circumstances.— In order to determine the legislative intent in the enactment of a statute, it is a valuable aid to understand the situation and surrounding circumstances as the legislature did.[96]

Co., 89 App. Div. 245, 86 N. Y. Supp. 49; Bovi v. Hess, 123 App. Div. 389, 107 N. Y. Supp. 1001; Matter of Young Women's Christian Assoc., 156 App. Div. 295, 141 N. Y. Supp. 138, affirmed without opinion, 209 N. Y. 534, 102 N. E. 1118; People v. Willett, 164 App. Div. 1, 149 N. Y. Supp. 348, affirmed 213 N. Y. 368, 107 N. E. 707; People v. Draper, 169 App. Div. 479, 154 N. Y. Supp. 1034; Hayes v. Fay, 22 Misc. 320, 49 N. Y. Supp. 112; Ellis v. Hurst, 70 Misc. 122, 128 N. Y. Supp. 144, affirmed without opinion, 145 App. Div. 918, 130 N. Y. Supp. 1110; Williams v. People, 45 Barb. 201; Cumines v. Jefferson County, 63 Barb. 287; Russell v. New York, 2 Denio 461; Pumpelly v. Owego, 45 How. Pr. 219; People v. Stephens, 13 Hun 17; Hill v. Nye, 17 Hun 457; Collins v. Ralli, 20 Hun 246, affirmed 85 N. Y. 637; Brinckerhoff v. Bostwick, 23 Hun 237; People v. Carr, 25 Hun 325, affirmed 86 N. Y. 512; Nassau Gas Light Co. v. Brooklyn, 25 Hun 567, affirmed, 89 N. Y. 409; People v. Davenport, 25 Hun 630; Brick v. Gannar, 36 Hun 52; People v. Niagara County, 49 Hun 32, 1 N. Y. Supp. 460; Curry v. Buffalo, 57 Hun 25, 10 N. Y. Supp. 392, 31 N. Y. St. Rep. 745; Matter of Stevens, 70 Hun 243, 24 N. Y. Supp. 780; People v. Reliance Marine Ins. Co., 70 Hun 554, 24 N. Y. Supp. 190; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371; Howe's Cave Lime Co. v. Howe's Cave Assoc., 88 Hun 554, 34 N. Y. Supp. 848; Bellegarde v. Union Bag, etc., Co., 90 App. Div. 577, 86 N. Y. Supp. 72.

93. People v. Wood, 71 N. Y. 371; People v. Davenport, 91 N. Y. 574; Hayes v. Fay, 22 Misc. 320, 49 N. Y. Supp. 112. And see supra, § 39.

94. Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 14; Frasier v. Tompkins, 30 Hun 168. For the distinction between prospective and retroactive statutes, see supra, §§ 17–29.

95. In re Rochester, 66 N. Y. 413. For a discussion of implied repeals, see infra, §§ 170–179.

96. Corwin v. New York, etc., Co., 13 N. Y. 42; People v. New Jersey Cent. R. Co., 42 N. Y. 283; Smith v. People, 47 N. Y. 330; Hudson Iron Co. v. Alger, 54 N. Y. 173; Fayetteville Farmers' Bank v. Hale, 59 N. Y. 53; People v. New York, etc., R. Co., 84 N. Y. 565; People v. Davenport, 91 N. Y. 574; In re Livingston, 121 N. Y. 94, 24 N. E. 290; O'Brien v. New York, 139 N. Y. 543, 35 N. E. 323; People v. Butler, 147 N. Y. 164, 41 N. E. 416; People v. Fitzgerald, 180 N. Y. 269, 73 N. E. 55; Woollcott v. Shubert, 217 N. Y. 212, 111 N. E. 829; Tyrrell v. New York, 34 App. Div. 334, 54 N. Y. Supp. 372; People v. Land Office Com'rs, 152 App. Div. 543, 137 N. Y. Supp. 393, affirmed 207 N. Y. 42, 100 N. E. 735; Ellis v. Hurst, 70 Misc. 122, 128 N. Y. Supp. 144, affirmed without opinion, 145 App. Div. 918, 130 N. Y. Supp. 1110; Jerome Park Co. v. Board of Police, 11 Abb. N. Cas. 342; Canastota, etc., Plank Road Co. v. Parkhill, 50 Barb. 601; Jackson v. Phelps, 3 Caines 62; New York v. Hart, 16 Hun 380; New York v. Broadway, etc., R. Co., 17 Hun 242; In re Breslin, 45 Hun 210; Bixby v. New York, 61 Hun 490, 16 N. Y. Supp. 364, 41 N. Y. St. Rep. 168; Degrauw v. Long Island Elec. R. Co., 43 App. Div. 502, 60 N. Y. Supp. 163; People v. Hilliard, 85 App. Div. 507, 83 N. Y. Supp. 204. The intention of the legislature that certain town bonds need not be sealed, is confirmed by the well-known circumstance that towns do

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The conditions under which the act was adopted,[97] and the evil intended thereby to be cured,[98] materially explain the purpose of the legislature. The history of the period,[99] and of the act itself,[1] are relevant considerations on the question of legislative intent. Thus, in construing a statute, the courts frequently consider the common law rule and then follow the course of legislation on the subject, the lineage of the act being thought to illuminate the intent of the legislature.[2] For example, the word "witness" in a statute passed before parties to an action were permitted to testify, is not to be construed as including parties.[3] A deliberate change in the language of a statute is persuasive that a change in the law has been effected,[4] but, in a consolidation or revision of statutes, a change in the language does not generally signify a change in the rule of law.[5] But these matters are simply aids to ascertain the intent of the legislature, and the meaning of a statute is primarily to be determined from the language used.[6] The surrounding circumstances will not be allowed to control the plain, unambiguous meaning of the words of the statute.[7] The extraneous circumstances which are considered as an aid in the interpretation, are those which are commonly known by the

not ordinarily have occasion for or possess a corporate seal. Starin v. Genoa, 29 Barb. 442.

97. Bull v. New York City R. Co., 192 N. Y. 361, 85 N. E. 385, 19 L. R. A. (N. S.) 778.

98. See supra, § 56, as to the mischief to be remedied.

99. Wiley v. Solvay Process Co., 215 N. Y. 584, 109 N. E. 606; Woollcott v. Shubert, 217 N. Y. 212, 11 N. E. 829; Gifford v. Livingston, 2 Denio 380; In re Breslin, 45 Hun 210, 10 N. Y. St. Rep. 80.

1. Corning v. McCullough, 1 N. Y. 47, 49 Am. Dec. 287; People v. Home Ins. Co., 92 N. Y. 328; East v. Brooklyn Heights R. Co., 195 N. Y. 409, 88 N. E. 751, 23 L. R. A. (N. S.) 513; Wiley v. Solvay Process Co., 215 N. Y. 584, 109 N. E. 606; Matter of Gihon, 48 App. Div. 598, 62 N. Y. Supp. 426; Weir v. Barker, 104 App. Div. 112, 93 N. Y. Supp. 732; People v. Hemleb, 127 App. Div. 356, 111 N. Y. Supp. 690; Matter of Foster, 139 App. Div. 769, 124 N. Y. Supp. 667, 675; Ahlers v. Clement, 141 App. Div. 391, 127 N. Y. Supp. 61, affirmed, 201 N. Y. 592, 95 N. E. 1122; Hanrahan v. Terminal Station Commission, 152 App. Div. 349, 136 N. Y. Supp. 1001, reversed on other grounds, 206 N. Y. 494, 100 N. E. 414; Lipstein v. Provident Loan Soc., 154 App. Div. 732, 139 N. Y. Supp. 799; Colyer v. Richard K. Fox Pub. Co., 162 App. Div. 297, 146 N. Y. Supp. 999; People v. Buccolieri, 91 Misc. 156, 152 N. Y. Supp. 707; People v. Hoym, 20 How. Pr. 76; Spencer v. Myers, 73 Hun 274, 26 N. Y. Supp. 371; People v. State Racing Commission, 103 N. Y. Supp. 955.

2. People v. Home Ins. Co., 92 N. Y. 328; Fire Department v. Stanton, 159 N. Y. 225, 54 N. E. 28; Tyrrell v. New York, 34 App. Div. 334, 54 N. Y. Supp. 372; Billings v. Baker, 28 Barb. 343; Friery v. People, 54 Barb. 319; French v. Kirkland, 1 Paige 117.

3. Stake v. Andre, 9 Abb. Pr. 420.

4. See infra, § 115.

5. See infra, § 184.

6. People v. Sturges, 156 N. Y. 580, 51 N. E. 295: Fire Department v. Stanton, 159 N. Y. 225, 54 N. E. 28; Wiley v. Solvay Process Co., 215 N. Y. 584, 109 N. E. 606; Matter of Stevens, 70 Hun 243, 24 N. Y. Supp 780. And see supra, §§ 52, 54.

7. People v. Sturges, 156 N. Y. 580, 51 N. E. 295; Rome v. Knox, 14 How. Pr. 268; People v. Grant, 70 Hun 233, 24 N. Y. Supp. 776.

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public and which are within the judicial knowledge of the courts. Special facts, not of judicial knowledge, will not be admitted in evidence so as to affect the construction to be placed on a statute.[8]

§ 96. Debates or proceedings in legislature.— It is a common practice of the courts to refer to the printed proceedings of a constitutional convention in order to determine the construction to be placed on a section of the constitution. In the same way, though less frequently, the courts utilize legislative proceedings when construing statutes. If the interpretation to be attached to a statute is doubtful, to a limited extent recourse may be had to the records and journals of the legislature, showing the history of the law and the debates thereupon.[9] But the use of the legislative proceedings should be employed cautiously, for their tendency is frequently to show the intent of a few members of one body rather than the joint intent of both houses.[10] Indeed, the proper function of the legislative debates is to show the evil at which the statute in question is aimed as a remedy, and it has been thought that the statements and opinions of the members uttered in the debates are not competent aids to determine the meaning of language used in the statute.[11]

§ 97. Public, governmental or legislative policy.— The policy of the state as evidenced by prior acts is material in the exposition of statutes.[12] It is assumed that the legislature will not abolish a long-standing policy without using explicit words to show its intention.[13] Hence, where a contrary intention does not appear, that construction will be given a statute which accords

8. People v. Stephens, 71 N. Y. 527, wherein it was said: "In construing acts of the legislature, the language of the act, and such historical or other facts as are within the scope of judicial cognizance, are ordinarily the only guides, and particular facts or special information placed before the legislature cannot be resorted to."

9. People v. Dalton, 158 N. Y. 175, 52 N. E. 1113; Peck v. Baldwin, 58 Hun 308, 11 N. Y. Supp. 792, 34 N. Y. St. Rep. 511, 19 Civ. Pro. 403. See also McGrath v. Grout, 69 App. Div. 314, 74 N. Y. Supp. 782, affirmed 171 N. Y. 7, 63 N. E. 547.

10. New York, etc., R. Co. v. Roll, 32 Misc. 321, 66 N. Y. Supp. 748.

11. Woollcott v. Shubert, 217 N. Y. 212, 111 N. E. 829.

12. Behan v. People, 17 N. Y. 516; In re New York, etc., R. Co., 193 N. Y. 72, 85 N. E. 1014; Ziegler v. Corwin, 12 App. Div. 60, 42 N. Y. Supp. 855; Slater v. Slater, 78 App. Div. 449, 80 N. Y. Supp. 363; People v. Town Clerk, 26 Misc. 220, 56 N. Y. Supp. 64; Jewell v. Ithaca, 36 Misc. 499, 73 N. Y. Supp. 953, affirmed 72 App. Div. 220, 76 N. Y. Supp. 126; People v. Draper, 67 Misc. 460, 124 N. Y. Supp. 758, affirmed 142 App. Div. 102, 127 N. Y. Supp. 14; Fort v. Burch, 6 Barb. 60; People v. Krank, 46 Hun 632; People v. Monroe County, 60 Hun 328, 14 N. Y. Supp. 867, 38 N. Y. St. Rep. 958; People v. Fanshawe, 65 Hun 77, 19 N. Y. Supp. 865; McAvoy v. New York, 52 App. Div. 485, 65 N. Y. Supp. 274.

13. In re New York, etc., R. Co., 193 N. Y. 72, 85 N. E. 1014.

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with prior legislative policy on the same question.[14] Of course, if statutes relate to the same general subject so as to be *in pari materia,* they are to be construed together under the doctrine relating to the construction of statutes so related,[15] but the doctrine now under consideration has an application which is extended to statutes not strictly *in pari materia.*[16] The general system of legislation upon the subject matter of a statute may be taken in view to aid in the construction of a particular statute relating to the same subject.[17] Thus, in view of the legislative system of keeping the civil and criminal codes separate and distinct, it will be generally held that provisions of the Code of Civil Procedure are not applicable to criminal proceedings.[18]

§ 98. Usage or custom.— Usages and customs of two classes are important in the construction of statutes. In the first place, those usages which have grown up in connection with a statute after its enactment may afford a practical construction of it which will be respected by the courts.[19] Secondly, those customs and usages which were general at the time of the enactment of the statute may constitute a part of the circumstances surrounding its enactment and be of assistance in determining its meaning. For example, the act continuing the charter of a corporation "until" the first day of January, was construed as expiring with the 31st day of the previous December, and this conclusion was reached by aid of the custom of making the calendar year coincident with the happening of many events.[20]

§ 99. Division into sections or titles.—All parts of a statute are to be construed together,[21] and, as a general proposition, it is immaterial in such construction that the statute is divided into sections, chapters, or titles.[22] It is construed as one law. Thus, the charter of the city of New York is construed as one statute, though it is divided into chapters and sections.[23] Each separate division of the Penal Law, however, should be construed as

14. Washington Cemetery v. Prospect Park, etc., R. Co., 7 Hun 655, affirmed, 68 N. Y. 591.

15. See supra, §§ 67–71.

16. Matter of McKeon, 26 Misc. 464, 58 N. Y. Supp. 589.

17. Perkins v. Smith, 116 N. Y. 441, 23 N. E. 21; People v. Dolan, 1 Trans. App. 118, 36 N. Y. 59.

18. Williams v. People, 45 Barb. 201. And see further, § 70.

19. See infra, § 108, as to practical constructions.

20. People v. Walker, 17 N. Y. 502.

21. § 59.

22. People v. Kane, 43 App. Div. 472, 61 N. Y. Supp. 195, 632, affirmed 161 N. Y. 380, 55 N. E. 946.

23. People v. Kane, 43 App. Div. 472, 61 N. Y. Supp. 195, 632, affirmed 161 N. Y. 380, 55 N. E. 946.

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providing for a separate and distinct class of cases.[24] Even separate acts, passed in pursuance of the same plan for the consolidation or revision of statutes, are to be construed together. Thus, the general laws of 1892, constituting several chapters, were held to be so connected that they should be construed together;[25] and the Consolidated Laws of 1909 are, no doubt, entitled to the same construction. But what has been said does not necessarily mean that the position of a clause or sentence in the context of the law does not affect the interpretation it shall receive. It frequently is an important aid in determining its meaning.[26] Thus, the statutory requirement that contracts not to be performed within a year are to be in writing does not apply to leases for a year to commence *in futuro,* for the reason that the latter requirement is embodied in the Personal Property Law, not in the Real Property Law.[27] So, too, the legislature by placing section 64 of the Railroad Law, formerly known as section 42a and as the Barnes Act, in the General Railroad Law and referring therein to all railroad corporations, made it applicable to street railway companies.[28] The headings of the various chapters or sections of an act, when inserted by the legislature, are considered as a part of their respective chapters or sections, and are construed accordingly.[29] A section heading will not, however, be permitted in all cases to limit the effect of the section; the words of the statute may be broader than its heading.[30] And such headings, when inserted by the compiler of an edition of the statutes, are not a part of the enactment and should not be considered by the courts.[31] It is provided by statute, that "If the title of any article or other division of a statute, or the head note of a section shall be amended or repealed in the body of the statute, or if a new article or other division having a title, or a new section having a new head note be added to a statute, the corresponding title or head note, if any, in an abstract of contents at the beginning of the article or other division of the statute shall be deemed to

24. Darry v. People, 10 N. Y. 120; Bank of Metropolis v. Faber, 1 App. Div. 341, 37 N. Y. Supp. 423, affirmed 150 N. Y. 200, 44 N. E. 779.

25. Bank of Metropolis v. Faber, 1 App. Div. 341, 37 N. Y. Supp. 423, affirmed 150 N. Y. 200, 44 N. E. 779.

26. See Isaacs v. Isaacs, 10 Daly 306.

27. Young v. Daks, 5 N. Y. 463, 55 Am. Dec. 356.

28. Kent v. Jamestown Street R. Co., 205 N. Y. 361, 98 N. E. 664.

29. People v. Molyneux, 40 N. Y. 113; Matter of Kellum, 6 Lans. 1.

30. People v. Long Island R. Co., 194 N. Y. 130, 87 N. E. 79.

31. People v. Hartwell, 166 N. Y. 361, 59 N. E. 929; People v. Fishman, 64 Misc. 256, 119 N. Y. Supp. 89.

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be correspondingly amended or repealed, although there be no express reference thereto." [32]

Grammar, Collocation, Punctuation

§ 100. In general.—The members of the legislature are not necessarily charged with a knowledge of the grammatical rules of the English language, and in the interpretation of their acts, such construction is given the language as will best effectuate their intent, without reference to the accurate grammatical construction of words, phrases, and sentences.[33] In other words, inaccurate grammar must yield to the legislative intent.[34] Indeed, all the canons of construction, even the literal meaning of the words used,[35] must give way, if necessary to give effect to the intent of the legislature. Of course, if it is evident that the legislative intent is in harmony with the grammatical construction of the act, there is no occasion for refusing to follow such construction.[36]

§ 101. Singular and plural forms.— Ordinarily, the legislature by use of a plural term intends a reference to more than one matter or thing,[37] and by the use of the singular number, a reference to one matter or thing is usually imported.[38] But the grammatical form of words must give way if it conflicts with the legislative intent; and, where such is the case, words in the singular may be construed as plural, and words in the plural form may be construed as singular in meaning.[39] This rule is now declared by section 35 of the General Construction Law, which provides: "Words in the singular number include the plural, and in the plural number include the singular." It is obvious that this statute is not to be literally construed. The statute does not mean

32. General Construction Law, § 81.

33. People v. Gates, 56 N. Y. 387; People v. Prendergast, 148 App. Div. 129, 132 N. Y. Supp. 115; Kent v. Binghamton, 40 Misc. 1, 81 N. Y. Supp. 198, reversed 90 App. Div. 553, 86 N. Y. Supp. 411; Heeney v. Brooklyn Benev. Soc., 33 Barb. 360, affirmed 39 N. Y. 333; Jackson v. Van Zandt, 12 Johns. 169.

34. People v. Gates, 56 N. Y. 387; People v. Prendergast, 148 App. Div. 129, 132 N. Y. Supp. 115; People v. Deckenbrock, 157 App. Div. 379, 142 N. Y. Supp. 278, affirmed without opinion, 209 N. Y. 604, 103 N. E. 1128; Kent v. Binghamton, 40 Misc. 1, 81 N. Y. Supp. 198, reversed 90 App. Div. 553, 86 N. Y. Supp. 411; Jackson v. Van Zandt, 12 Johns. 169. And see supra, § 72, as to awkward or inartistic language.

35. See supra, § 62.

36. Heeney v. Brooklyn Benev. Soc., 33 Barb. 360, affirmed 39 N. Y. 333.

37. Hodgman v. People, 4 Denio 235; People v. Safford, 5 Denio 112.

38. People v. Lytle, 7 App. Div. 553, 40 N. Y. Supp. 153.

39. People v. Gates, 56 N. Y. 387; Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351.

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that, under all circumstances, a word in the singular has a plural meaning, or a word in the plural has a singular meaning. Hence, the statutory rule is not applicable where the act to be construed indicates that it shall not be applied.[40] In the case of a statute which indicates that it was carefully drawn, the use of the plural form may not be deemed a mere inadvertence.[41]

§ 102. Punctuation.—While an act of Parliament is enacted as read and the original rolls contain no marks of punctuation, statutes of this state are enacted as read and printed, so that the punctuation is a part of the act as passed and appears in the roll when filed with the secretary of state.[42] The punctuation, however, is subordinate to the text, and it is never allowed to control the plain meaning of the act.[43] "In construing statutes it is not a safe rule to place too much reliance upon the punctuation."[44] The courts, if necessary for the expounding of the legislative intent, will not hesitate to transpose a comma or other mark of punctuation,[45] or to change one mark for another which better represents the intention of the lawmakers.[46] But the common marks of punctuation have been in use for centuries, and it is well known that their chief function is to make the writer's meaning clear. Hence, if such meaning is not clear, the marks may be considered, and they frequently form a valuable aid in determining the legislative intent.[47]

§ 103. Ascertainment of antecedents.— If a statute is not carefully drawn, it is in many instances difficult to determine the antecedents of relative clauses. As a general rule, a relative word or clause relates to the next antecedent, unless by such construction the meaning of the sentence would be impaired.[48] A relative is to be referred to such antecedents as will give a

40. Moynahan v. New York, 205 N. Y. 181, 98 N. E. 482; People v. Woodbury, 208 N. Y. 421, 102 N. E. 565, 566; Beekman v. Third Ave. R. Co., 13 App. Div. 279, 43 N. Y. Supp. 174.

41. Minor v. Erie R. Co., 171 N. Y. 566, 64 N. E. 454.

42. Tyrrell v. New York, 159 N. Y. 239, 53 N. E. 1111.

43. Butterfield v. Rudde, 58 N. Y. 489; In re Brooklyn El. R. Co., 125 N. Y. 434, 26 N. E. 474; Tyrrell v. New York, 159 N. Y. 239, 53 N. E. 1111; Matter of Olmstead, 17 Abb. N. Cas. 321, 4 Dem. 44.

44. Kaufman v. Schoeffel, 37 Hun 140.

45. In re Brooklyn El. R. Co., 125 N. Y. 434, 26 N. E. 474; Butterfield v. Rudde, 58 N. Y. 489.

46. Matter of Olmsted, 17 Abb. N. Cas. 321, 4 Dem. 44.

47. Tyrrell v. New York, 159 N. Y. 239, 53 N. E. 1111; Manhattan Co. v. Kaldenberg, 165 N. Y. 1, 58 N. E. 790; Braham v. Braham, 91 Misc. 151, 154 N. Y. Supp. 1044; Dooley's Case, 8 Abb. Pr. 188; Squires' Case, 12 Abb. Pr. 38; Hart v. Kennedy, 14 Abb. Pr. 432.

48. Foote v. People, 56 N. Y. 321.

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clause a sensible and reasonable interpretation.[49] And whether a verb is in the singular or plural form, may assist materially in determining antecedents.[50] Of course, the grammatical construction is not to be followed when it leads away from the legislative intent, but the marks of punctuation are not to be disregarded when the meaning of the statute is not clear, and the courts may follow the punctuation in ascertaining the antecedent.[51] As a matter of grammatical construction, the insertion of a comma before the clause whose antecedent is doubtful requires that it be referred back to some preceding word or phrase. It has also been stated as a rule in the construction of statutes that general words at the end of a sentence refer to and qualify the whole sentence, while such words in the middle of a sentence apply only to a particular branch of it and are not generally extended to the words following.[52]

Legislative Construction

§ 104. Construction declared by statute.—While, on the one hand, the lawmaking power is vested in the legislature and not in the courts;[53] on the other hand, the interpretation of law is a function which is vested in the judiciary, not in the lawmakers.[54] In accordance with this general doctrine, the legislature has no controlling power to declare that a specific pre-existing statute shall receive a certain construction from the time of its enactment, when such construction is contrary to what it otherwise would receive from the courts.[55] This general doctrine, however, is subject to definite limitations. Thus, a statute declaring the true meaning of a previous statute, though it has no controlling effect on the action of the court as to cases arising before the enactment of the later law, furnishes the rule of construction for

49. People v. McClave, 99 N. Y. 83, 1 N. E. 235.

50. Braham v. Braham, 91 Misc. 151, 154 N. Y. Supp. 1044.

51. Squires' Case, 12 Abb. Pr. 38; Hart v. Kennedy, 14 Abb. Pr. 432; Coxson v. Doland, 2 Daly 66. But see Kaufman v. Schoeffel, 37 Hun 140, where the punctuation was not followed.

52. Coxson v. Doland, 2 Daly 66. See also People v. Rosenberg, 138 N. Y. 410, 34 N. E. 285.

53. See §§ 30 and 90.

54. People v. Wilson, 3 Hun 437; Larned v. Syracuse, 17 App. Div. 191, 44 N. Y. Supp. 857; Weisberg v. Weisberg, 112 App. Div. 231, 98 N. Y. Supp. 260.

55. People v. New York, 16 N. Y. 424; Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53; Roberts v. State, 30 App. Div. 106, 51 N. Y. Supp. 691; Rand v. Massachusetts Ben. L. Assoc., 18 Misc. 336, 42 N. Y. Supp. 26, 76 N. Y. St. Rep. 26; Jackson v. Phelps, 3 Caines 62; Dash v. Van Kleeck, 7 Johns. 477, 5 Am. Dec. 291; Pardee v. Blanchard, 19 Johns. 442; Salters v. Tobias, 3 Paige 338;

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prospective cases.[56] Moreover, a declaration by the legislature as to the meaning of a prior act, even when it is not controlling, is entitled to some weight on its construction.[57] And the general doctrine does not forbid at the time of the enactment a declaration by the legislature of the construction to be placed on its own language.[58] Thus, there is no objection to a clause in a statute declaring that a certain meaning is its true meaning, and to carry out such meaning all other parts of the statute must yield.[59] And the legislature frequently enacts statutory definitions of the terms it employs, the definitions forming a part of the statute.[60] Besides specific definitions, the lawmakers sometimes state that a statute shall receive a liberal, or some other kind, of construction. Though such legislation may be unwise, there is no constitutional objection to it, and such statements of construction are considered by the courts in the interpretation of the act.[61]

§ 105. Legislative use of terms judicially construed.—As stated in another paragraph,[62] words having a precise and well settled legal meaning in the jurisprudence of the state, are to be understood in such sense when used in statutes, unless a different meaning is plainly indicated. In accordance with this general doctrine, a word which has received a judicial construction will generally receive such meaning when it is again used by the legislature in legislation on the same subject.[63] The legislature is

Larned v. Syracuse, 17 App. Div. 191, 44 N. Y. Supp. 857; Weisberg v. Weisberg, 112 App. Div. 231, 98 N. Y. Supp. 260; Smith v. Syracuse, 17 App. Div. 63, 44 N. Y. Supp. 852. It is not competent for the legislature, by a retroactive statute, to make the opinion of the attorney-general, that a contract between the State and an individual in relation to convict labor was illegal, conclusive evidence of such illegality as against the latter. Young v. Beardsley, 11 Paige 93.

56. People v. New York, 16 N. Y. 424; Dash v. VanKleeck, 7 Johns. 477, 5 Am. Dec. 291.

57. Jackson v. Phelps, 3 Caines 62. See also supra, § 69, as to subsequent statutes in pari materia. And see infra, § 107, as to practical legislative constructions.

58. People v. Gray, 185 N. Y. 196, 77 N. E. 1172; Close v. Potter, 2 Misc. 1, 21 N. Y. Supp. 1086. Compare People v. Wilson, 3 Hun 437.

59. Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53.

60. See infra, § 106.

61. People v. Teal, 196 N. Y. 372, 89 N. E. 1086, 17 Ann. Cas. 1175, 25 L. R. A. (N. S.) 120; New York County Nat. Bank v. Wood, 169 App. Div. 817, 153 N. Y. Supp. 860; Verplanck v. Mercantile Ins. Co., 1 Edw. 83.

62. § 124.

63. People v. Richards, 108 N. Y. 137, 15 N. E. 371, 2 A. S. R. 373; In re Rochester Electric R. Co., 123 N. Y. 351, 25 N. E. 381; Pouch v. Prudential Ins. Co., 204 N. Y. 281, 97 N. E. 731, Ann. Cas. 1913C 1191; Pulitzer v. New York, 48 App. Div. 6, 62 N. Y. Supp. 587; Matter of Baird, 126 App. Div. 439, 110 N. Y. Supp. 708; New York, etc., R. Co. v. Roll, 32 Misc. 321, 66 N. Y. Supp. 748; Callahan v. O'Brien, 72 Hun 216, 25 N. Y. Supp. 410; Degrauw v Long Island Electric R. Co., 43 App. Div. 502, 60 N. Y. Supp. 163; Halsey v. Henry Jewett Dramatic Co., 114 App. Div. 420, 99 N. Y. Supp. 1122.

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deemed to have had knowledge of the construction which has been put upon the term, and to have used it in subservience to such judicial meaning.[64] Thus, when the meaning of a word or phrase used in an earlier statute has been judicially declared, the same word or phrase in a subsequent statute on the same general subject will almost invariably receive the same construction.[65] And in the absence of evidence to the contrary, it is presumed that the legislature used a term in an amendatory act in the same sense in which it was employed in the original statute.[66] If certain words of a section of the code have received judicial interpretation and thereafter the legislature adds a new section upon the same subject and uses the expression which has received interpretation, the courts will give the words in the new section the same construction as they received in the older section.[67] If a statute which had been judicially construed is replaced by a new law containing the same provisions, the former interpretation will, as a general rule, be followed in the construction of the new act.[68] Particularly is this true in the revision or consolidation of statutes, for, in such cases, even a change in phraseology does not necessarily import a change in the meaning of the law.[69] In the case of a revision or consolidation of statutes, if there is no change in the phraseology of the statute, its former judicial construction becomes a part of the subsequent statute.[70] If the legislature wished to change the interpretation of a statute, it should make an appropriate change in the language; the fact that no change in wording is made creates a presumption that no change in meaning is intended.[71] And the

64. Kent v. Jamestown St. R. Co., 205 N. Y. 361, 98 N. E. 664; Cashmore v. Peerless Motor Car Co., 154 App. Div. 814, 139 N. Y. Supp. 359; Caesar v. Bernard, 156 App. Div. 724, 141 N. Y. Supp. 659, affirmed on opinion below 209 N. Y. 570, 103 N. E. 1122.

65. People v. Liscomb, 3 Hun 760.

66. People v. Donohue, 15 Hun 418. As to the construction of amendatory acts, see infra, §§ 114–118.

67. Pouch v. Prudential Ins. Co., 204 N. Y. 281, 97 N. E. 731, Ann. Cas. 1913C 1191.

68. People v. Green, 56 N. Y. 466; Warner v. Jaffray, 96 N. Y. 248, 48 Am. Rep. 616; Pulitzer v. New York, 48 App. Div. 6, 62 N. Y. Supp. 587; DeLaney v. Blizzard, 7 Hun 66; Holcomb v. Holcomb, 20 Hun 156; Anderson v. Appleton, 48 Hun 534, 1 N. Y. Supp. 319; Erhard v. Kings County, 36 N. Y. Supp. 656; Degrauw v. Long Island Electric R. Co., 43 App. Div. 502, 60 N. Y. Supp. 163; Halsey v. Henry Jewett Dramatic Co., 114 App. Div. 420, 99 N. Y. Supp. 1122. See also People v. Davenport, 25 Hun 630.

69. See infra, § 184.

70. People v. Richards, 108 N. Y. 137, 15 N. E. 371, 2 A. S. R. 373; Caesar v. Bernard, 156 App. Div. 724, 141 N. Y. Supp. 659, affirmed on opinion below, 209 N. Y. 570, 103 N. E. 1122.

71. Warner v. Jaffray, 96 N. Y. 248, 48 Am. Rep. 616; Pulitzer v. New York, 48 App. Div. 6, 62 N. Y. Supp. 587; Hakes v. Peck, 30 How. Pr. 104. And see infra, § 115, as

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presumption that no change in the law is intended, obtains when a subsequent legislature combines in one section provisions which formerly were divided into two.[72]

§ 106. Statutory definitions.— For the purpose of controlling the meaning which shall be given to the terms used by the legislature, that body sometimes enacts statutory definitions. Thus, in the General Construction Law[73] the legislature has dictated the meaning of certain terms which are frequently used in statutory law. And it is common for particular statutes to have statutory definitions of their own.[74] While the legislature cannot repeal the English language, it is clearly within its power to explain the meaning which shall be attached to the words which it uses; and hence such statutory definitions may be controlling on the courts.[75] Of course, if the context clearly indicates that the statutory definition was not to apply in a certain case, the courts will not follow the definition.[76] A statutory definition in one statute (other than the General Construction Law) has no controlling force in the construction of another statute.[77] If a term is defined in both the General Construction Law and a specific statute and the two definitions are not in accord, the court in construing the specific statute will adopt the meaning there given rather than the one in the General Construction Law. Indeed, the definitions in the General Construction Law are an appropriate assisting function only when the language of the statute, construed in accordance with the canons of interpretation, does not indicate that a different meaning is intended.[78]

§ 107. Practical legislative construction.—While the courts, as a general rule, will not permit the legislature to control the construction which they will put on pre-existing statutes,[79] a solemn declaration by the lawmakers as to the construction which shall be placed on a prior act is entitled to some weight that such

to the significance of a change in language.

72. Warner v. Jaffray, 96 N. Y. 248, 48 Am. Rep. 616.

73. §§ 10–58.

74. Goodman v. Greenberg, 53 Misc. 581, 103 N. Y. Supp. 779; Mueller v. Goerlitz, 53 Misc. 53, 103 N. Y. Supp. 1037; People v. Hendrickson, 54 Misc. 337, 104 N. Y. Supp. 122.

75. In re Bronson, 150 N. Y. 1, 44 N. E. 707, 55 A. S. R. 632, 34 L. R. A. 238; People v. Gray, 185 N. Y. 196, 77 N. E. 1172; Matter of Wallace, 36 Misc. 1, 72 N. Y. Supp. 445; Wirt v. Allegany County, 90 Hun 205, 25 N. Y. Supp. 887.

76. Ransom v. Miner, 3 Sandf. 692, Code Rep. N. S. 98.

77. Fassett v. Smith, 23 N. Y. 252.

78. In re Bronson, 150 N. Y. 1, 44 N. E. 707, 55 A. S. R. 632, 34 L. R. A. 238.

79. See supra, § 104.

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construction is a proper one.[80] The distinction between the two rules is that while the declarations of the legislature are not allowed to control absolutely the interpretation of an earlier act, they will be considered as an indication of the legislative intent in reference to the earlier statute. When a legislative provision assumes a pre-existing state of the law, it is some evidence that the construction of the prior statute is such as it is thus assumed to be.[81] A practical construction of a statute made by public officials and recognized by the legislature is entitled to great weight in its interpretation, unless the legislation and practice is manifestly in violation of the words used.[82] Even when the practice has not been recognized by legislation, it is given considerable weight in the interpretation of the statute.[83] The practical construction which the legislature has given to prior acts has frequently been considered in their interpretation.[84] Thus, if there is doubt whether a city official has the power under a statute to purchase certain supplies, a subsequent statute expressly recognizing the liability of the city for the supplies so purchased, affords a practical construction of the prior statute.[85] So, too, on a dispute whether a certain corporation has banking powers, subsequent acts referring to the company as a bank may be deemed to settle the doubt.[86] The rule that the construction placed upon a statute by the legislature will be followed, cannot be availed of when the legislation has not been uniform, not acquiesced in, and has been repeatedly questioned in the courts. This construction has, as a rule, been applied only to what may be termed "administrative statutes;" that is, statutes relating more particularly to the transaction or regulation of governmental business. It can hardly be said to be strictly a rule of construction, but rather a persuasive aid to the court in determining what the true interpretation is; something to assist the court in arriving at the correct interpretation or meaning of the law in otherwise doubtful cases,—

80. People v. Benton, 29 N. Y. 534. And see supra, § 69, as to subsequent acts in pari materia.

81. People v. Benton, 29 N. Y. 534; Baird v. New York, 96 N. Y. 567; Cocheu v. Methodist Protestant Church, 32 App. Div. 239, 52 N. Y. Supp. 1019; People v. Cricuoli, 157 App. Div. 201, 141 N. Y. Supp. 855.

82. Hassan v. Rochester, 67 N. Y. 528; Smith v. Buffalo, 90 Hun 118, 35 N. Y. Supp. 635.

83. See infra, §§ 108, 109.

84. Powell v. Tuttle, 3 N. Y. 396; McCormack v. Coddington, 184 N. Y. 467, 77 N. E. 979.

85. Baird v. New York, 96 N. Y. 567.

86. People v. Manhattan Co., 9 Wend. 351.

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not a rule to control, but to advise the court.[87] In analogy to the rule which allows the practical construction by inferior officers to affect the interpretation of a legislative act,[88] it is sometimes held that a legislative interpretation of constitutional provisions of doubtful import will be followed by the courts.[89] The practical construction given by the legislature to a constitutional provision acquiesced in for years, acted upon by the executive and administrative officers, unquestioned for years, is entitled to great weight in its interpretation.[90]

Practical Construction

§ 108. In general.—A practical construction which has received the acquiescence of the public, the members of the bar, and the officers charged with its enforcement, will, in the case of ambiguity, be given considerable weight in the interpretation of a statute.[91] It is an old maxim that *Contemporanea expositio est fortissima lege.*[92] General usage, long continued and theretofore unquestioned, has much the weight of judicial decision and

87. Rathbone v. Wirth, 6 App. Div. 277, 40 N. Y. Supp. 535, affirmed 150 N. Y. 459, 45 N. E. 15, 34 L. R. A. 408.

88. § 109.

89. People v. Dayton, 55 N. Y. 367; Rathbone v. Wirth, 6 App. Div. 277, 40 N. Y. Supp. 535, affirmed, 150 N. Y. 459, 45 N. E. 15, 34 L. R. A. 408; Livingston v. VanIngen, 9 Johns. 507; Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351; Matter of Lorillard, 59 Hun 622, 13 N. Y. Supp. 83; Coutant v. People, 11 Wend. 511.

90. People v. Stephens, 13 Hun 17.

91. Curtis v. Leavitt, 15 N. Y. 9; Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53; Hassan v. Rochester, 67 N. Y. 528; Southampton v. Mecox Bay Oyster Co., 116 N. Y. 1, 22 N. E. 387; People v. Ballard, 134 N. Y. 269, 32 N. E. 54, 17 L. R. A. 737; Vail v. Broadway R. Co., 147 N. Y. 377, 42 N. E. 4, 30 L. R. A. 626; New York v. New York City R. Co., 193 N. Y. 543, 86 N. E. 565; People v. Prendergast, 206 N. Y. 405, 99 N. E. 1047; Matter of New York, 217 N. Y. 1, 111 N. E. 256; Hennessey v. Volkening, 30 Abb. N. Cas. 100, 22 N. Y. Supp. 528; Fort v. Burch, 6 Barb. 60; Meriam v. Harsen, 2 Barb. Ch. 232; Utica Bank v. Mersereau, 3 Barb. Ch. 528; Orser's Estate, 4 Civ. Pro. 129; Goff v. Vedder, 12 Civ. Pro. 358; Power v. Athens, 26 Hun 282, affirmed 99 N. Y. 592, 2 N. E. 609; In re Breslin, 45 Hun 210, 10 N. Y. St. Rep. 80; People v. Goodrich, 149 N. Y. Supp. 406. "There is no question that the practical construction of a statute by those for whom the law was enacted or by public officers whose duty it is to enforce it, acquiesced in by all for a long period of time, is of great importance in its interpretation in a case of serious ambiguity." Grimmer v. Tenement House Dept., 205 N. Y. 549, 98 N. E. 332. And see to the same effect Matter of New York, 217 N. Y. 1, 111 N. E. 256. "Although a cotemporaneous construction of the meaning of words in a statute is not necessarily infallible, yet when the minds of numerous lawyers and judges with one accord, although acting independently of each other, on the mere reading of a statute, attach the same meaning to it, it shows that the language of the act conveys the meaning with such clearness and force as to leave but little room for doubt as to its proper construction." People v. Kelley, 7 Robt. 592.

92. People v. Comstock, 78 N. Y. 356; Goff v. Vedder, 12 Civ. Pro. 358; In re Breslin, 45 Hun 210, 10 N. Y. St. Rep. 80.

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should not be lightly disregarded.[93] Public sentiment may be juster and greater than the letter of the law, and juster and wiser than the decisions of the courts.[94] If the practical construction is notorious, the legislature is charged with knowledge thereof, and its failure to interfere with such construction indicates its acquiescence therein.[95] Especially is a practical construction to be followed, when a departure will cause great mischief and confusion.[96] And a practical construction which is adverse to the parties so construing the act, is especially important.[97] Thus, provisions of the General Railroad Law beneficial to a street railway company may not be considered as applicable to such a company, if it has given the act a contrary practical construction.[98] A cotemporaneous or practical construction of a statute is not controlling; it is merely an aid in the interpretation of doubtful statutes.[99]

§ 109. Construction by public officers.— It is a well recognized rule of statutory construction that a long continued course of action under a statute by public officers whose duty it is to construe, execute and apply the act, is entitled to great weight in its construction, and a departure therefrom is not to be lightly made.[1] Thus, the construction which municipal officers have for many years placed on the municipal charter, is generally followed

93. Easton v. Pickersgill, 55 N. Y. 310; Goff v. Vedder, 12 Civ. Pro. 358.

94. Goff v. Vedder, 12 Civ. Pro. 358.

95. People v. Charbineau, 115 N. Y. 433, 22 N. E. 271; In re Breslin, 45 Hun 210, 10 N. Y. St. Rep. 80.

96. In re Washington St., etc., R. Co., 115 N. Y. 442, 22 N. E. 356; Matter of Street Opening, 12 Misc. 526, 33 N. Y. Supp. 594, 67 N. Y. St. Rep. 256, 33 N. Y. Supp. 599; Van Loon v. Lyons, 4 Daly 149, reversed 61 N. Y. 22. As to the avoidance of mischievous results, see supra, § 84.

97. The doctrine of practical construction has little application where the construction is given by the party whose duty it is to obey the law. In re Manhattan Sav. Inst., 82 N. Y. 142.

98. Vail v. Broadway R. Co., 147 N. Y. 377, 42 N. E. 4, 30 L. R. A. 626.

99. People v. Comstock, 78 N. Y. 356; People v. Kelly, 7 Robt. 592.

1. Easton v. Pickersgill, 55 N. Y. 310; In re Washington St., etc., R. Co., 115 N. Y. 442, 22 N. E. 356; New York v. New York City R. Co., 193 N. Y. 543, 86 N. E. 565; Grimmer v. Tenement House Dept., 205 N. Y. 549, 98 N. E. 332; People v. Prendergast, 206 N. Y. 405, 99 N. E. 1047; Matter of New York, 217 N. Y. 1, 111 N. E. 256; Rathbone v. Wirth, 6 App. Div. 277, 40 N. Y. Supp. 535, affirmed 150 N. Y. 459, 45 N. E. 15, 34 L. R. A. 408; Matter of Street Opening, 12 Misc. 526, 33 N. Y. Supp. 594, 67 N. Y. St. Rep. 256, 33 N. Y. Supp. 599; People v. Leavy, 28 Misc. 246, 59 N. Y. Supp. 408, affirmed 47 App. Div. 97, 62 N. Y. Supp. 161; Moriarty v. New York, 59 Misc. 204, 110 N. Y. Supp. 842; Lowman v. Billington, 65 Misc. 111, 119 N. Y. Supp. 825; Kirby v. State, 68 Misc. 626, 125 N. Y. Supp. 742; Matter of Breslin, 45 Hun 210, 10 N. Y. St. Rep. 80; Smith v. Buffalo, 90 Hun 118, 35 N. Y. Supp. 635; People v. Buffalo, 84 N. Y. Supp. 434; People v. Goodrich, 149 N. Y. Supp. 406

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by the courts.[2] On a question of the power of the governor to make a certain appointment to office, the fact that his predecessors exercised the power would in a case involved in doubt deserve to have great weight.[3] And the uniform recognition on the part of the officers of the state government of the right of street railway companies to incorporate under the General Railway Law, has been considered a valuable practical construction of the act in support of such practice.[4] But the practical construction by public officers cannot control the action of the courts, for the power of interpretation is lodged in the courts, not in executive officers.[5] And, if the act is not ambiguous, there is no room for the doctrine of practical construction, for the courts must effectuate the plainly expressed intention of the legislature without regard to the opinion of public officers.[6] To authorize the adoption of a practical construction, the ambiguity must not be captious, but should be so serious as to raise a reasonable doubt in a fair mind reflecting honestly upon the subject.[7] Moreover, the utility of the doctrine is impaired if a number of officers have taken a view of the statute contrary to the practical construction claimed.[8] But the doctrine of practical construction is entitled to especial weight when the legislature has recognized or ratified the practice of the officers.[9]

Adoption of Statutes and Constructions

§ 110. Adoption of another state statute by reference.—Except as limited by the provisions of the state constitution, there is no objection to an enactment which incorporates a prior state statute by a reference thereto and does not set out the same in detail. The prior statute may be incorporated by a particular

2. Southampton v. Mecox Bay Oyster Co., 116 N. Y. 1, 22 N. E. 387; New York v. New York City R. Co., 193 N. Y. 543, 86 N. E. 565; People v. Leavy, 28 Misc. 246, 59 N. Y. Supp. 408, affirmed 47 App. Div. 97, 62 N. Y. Supp. 161; Smith v. Buffalo, 90 Hun 118, 35 N. Y. Supp. 635.

3. People v. Molineux, 53 Barb. 9, affirmed 40 N. Y. 113.

4. In re Washington St., etc., R. Co., 115 N. Y. 442, 22 N. E. 356.

5. People v. Buffalo, 84 N. Y. Supp. 434. A construction placed on a section of the Banking Law by a former superintendent of banking is not allowed to determine the construction to be placed thereon by the courts. Matter of Tuckahoe Home Buildings, etc., Assoc., 81 Misc. 33, 142 N. Y. Supp. 48.

6. People v. Consolidated Telegraph, etc., Co., 187 N. Y. 58, 79 N. E. 892; New York v. New York City R. Co., 193 N. Y. 543, 86 N. E. 565; Moriarty v. New York, 59 Misc. 204, 110 N. Y. Supp. 842; People v. Molineux, 53 Barb. 9, affirmed 40 N. Y. 113.

7. New York v. New York City R. Co., 193 N. Y. 543, 86 N. E. 565.

8. People v. Consolidated Telegraph etc., Co., 187 N. Y. 58, 79 N. E. 892.

9. See supra, § 107.

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reference to the act, or the legislature in general terms may authorize the doing of an act "according to law." A special charter provision authorizing the assessment of taxes "according to law" refers to the general tax law in force at the time an assessment is made.[10] But the rule on the subject of incorporation of statutes is materially affected by section 17 of article III of the state constitution, which provides, "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act." The broad language of the constitutional provision, however, is curtailed by judicial decisions. Thus, it is held that, where a statute by its own language grants some power, confers some right, imposes some duty, or creates some obligation, the fact that it refers to some other existing statute, general or local, in order to point out the procedure, or some administrative detail necessary for the accomplishment of the purposes of the act, does not bring it in conflict with the provision of the state constitution.[11] Any other rule would require the lawmakers to enact a code of procedure with every special statute giving a new right. If any provision of a law is repealed and, in substance, re-enacted, a reference in any subsequent law to such repealed provision is deemed a reference to such re-enacted provision.[12]

§ 111. Amendment or repeal of act incorporated.— Where a statute is incorporated in a later one, the earlier one with all its amendments in force at the time of the adoption is included in the later one.[13] And, if the amendment to the incorporated act is in the form of a re-enactment thereof, the situation may be covered by section 80 of the General Construction Law, which provides: "If any provision of a law be repealed and, in substance, re-enacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision." But whether amendments made after the adoption will be deemed

10. Ontario Bank v. Bunnell, 10 Wend. 186.

11. People v. Banks, 67 N. Y. 568; People v. Lorillard, 135 N. Y. 285, 31 N. E. 1011; Choate v. Buffalo, 39 App. Div. 379, 57 N. Y. Supp. 383; People v. Bruning, 89 Hun 124, 34 N. Y. Supp. 1048; Weincke v. New York Cent., etc., R. Co., 61 Hun 619, 15 N. Y. Supp. 689, 39 N. Y. St. Rep. 584.

12. General Construction Law, § 80.

13. Mundy v. Excise Com'rs, 9 Abb. N. Cas. 117; Board Excise Com'rs v. Curley, 69 N. Y. 608, 9 Abb. N. Cas. 100.

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carried into the adopting act, is a question of considerable difficulty. The rule deducible from the authorities seems to be that, when the general law (not a specific statute) relating to some subject is incorporated into a particular statute, upon changes being made in such general law, the particular statute is deemed amended correspondingly.[14] To illustrate, if a special charter authorizes the assessment of taxes "according to law," the reference thus made to the General Tax Law includes amendments to such tax law; and, on the change in the general law, the system of municipal taxation is likewise changed.[15] So, too, under section 241 of the Code of Civil Procedure, which confers upon a county judge within his county the power conferred by law in general language upon an officer authorized to perform the duties of a justice of the supreme court, at chambers or out of court, the power is not limited to that possessed by such officer at the time the section was enacted, but changes with the alteration of the power of the officer.[16] But the rule seems to be different when a specific statute is incorporated into another statute; in such a case, what is incorporated is strictly the law at the time of the incorporation, and the incorporating statute is not deemed changed in correspondence with amendments to the incorporated act.[17] Thus, in 1862, a statute of 1858 relative to local improvements in the city of New York, was made applicable to the city of Brooklyn, and in 1874 the act of 1858 was amended, but it was held that the act of 1874 had no application to the city of Brooklyn.[18] Similarly, in 1880 the charter of the village of Sing Sing was revised, but such revision was a mere re-enactment of the charter of 1859 as to the subject of the alteration of streets. The law of 1859 incorporated for such proceedings the General Highway Act of the Revised Statutes, and it was held that amendments to such Revised Statutes in 1875 did not apply to the village of Sing Sing.[19] Similarly, a statute which refers to and adopts the provisions of a particular prior act is not repealed by the subsequent repeal of the prior statute, but the provisions of the incorporated statute continue

14. Ontario Bank v. Bunnell, 10 Wend. 186. See also Blake v. Wheeler, 18 Hun 496.
15. Ontario Bank v. Bunnell, 10 Wend. 186.
16. People v. Parr, 121 N. Y. 679, 24 N. E. 481.
17. Carling v. Purcell, 3 Misc. 55, 23 Abb. N. Cas. 478, 23 Civ. Pro. 140, 22 N. Y. Supp. 558, 51 N. Y. St. Rep. 835.
18. Knapp v. Brooklyn, 97 N. Y. 520.
19. In re Main Street, 98 N. Y. 454.

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in force so far as they form a part of the second statute.[20] Of course, the fact that two independent statutes contain similar provisions does not require that an amendment of one be incorporated as an amendment to the other. The legislature can amend one or both, in its discretion.[21]

§ 112. Adoption of construction of foreign statutes.— In the administration of justice in the courts in one state, it sometimes becomes necessary to construe the statutes of another state. When necessary to interpret the statute law of another state, the courts of this state are careful to follow the construction which has been placed on the act by the courts of the former state.[22] In each state it is the province of the courts of justice to determine the construction of its statutes, and, as the construction which they adopt becomes the law of the state, it must be regarded and followed as such by all foreign tribunals.[23] Moreover, the courts of the foreign state are presumed to be the best expositors of its own laws.[24] As was said by Judge Story, "No court professing to be governed by principle would assume the power to declare that a foreign court misunderstood the laws of their own country."[25] The fact that the several judges of the foreign court differed as to the construction of the act, or that the construction in question was made after the commencement of the action in the courts of this state, does not affect the binding force of the foreign decision.[26] Similarly, in the interpretation of a federal statute, the construction enforced by the federal courts will be adopted by the

20. Wick v. Ft. Plain, etc., R. Co., 27 App. Div. 577, 50 N. Y. Supp. 479. A special statute making the provisions of a general statute applicable to a local court, is not affected by the repeal of the general statute. People v. Webster, 8 Misc. 133, 28 N. Y. Supp. 646, 60 N. Y. St. Rep. 149.

21. People v. Damron, 160 App. Div. 424, 145 N. Y. Supp. 239, affirmed 212 N. Y. 256, 106 N. E. 67.

22. Jessup v. Carnegie, 80 N. Y. 441, 36 Ann. Rep. 643; Leonard v. Columbia Steam Nav. Co., 84 N. Y. 48, 38 Am. Rep. 491; Harrison v. Wallis, 44 Misc. 492, 90 N. Y. Supp. 44; Matthews v. Dickinson, 36 Misc. 187, 73 N. Y. Supp. 190; Viele v. Wells, 9 Abb. N. Cas. 277; Howe v. Welch, 17 Abb. N. Cas. 397, 3 How. Pr. (N. S.) 465, 14 Daly 80, 11 Civ. Pro. 444; Savings Assoc. v. O'Brien, 51 Hun 45, 3 N. Y. Supp. 764, 20 N. Y. St. Rep. 826; Hoyt v. Thompson, 3 Sandf. 416, reversed on other grounds, 5 N. Y. 320; Campbell v Campbell, 53 Super. Ct. 299. But the construction placed by an inferior court in a foreign jurisdiction on a statute of that jurisdiction, will not control as against a contrary construction of the same statute by the Court of Appeals of New York. Matter of Robertson, 23 Misc. 450, 51 N. Y. Supp. 502.

23. Hoyt v. Thompson, 3 Sandf. 416, reversed on other grounds, 5 N. Y. 320.

24. Matthews v. Dickinson, 36 Misc. 187, 73 N. Y. Supp. 190; Howe v. Welch, 17 Abb. N. Cas. 397, 3 How. Pr. (N. S.) 465, 14 Daly 80, 11 Civ. Pro. 444.

25. Howe v. Welch, 17 Abb. N. Cas. 397, 3 How. Pr. (N. S.) 465, 14 Daly 80, 11 Civ. Pro. 444.

26. Jessup v. Carnegie, 80 N. Y. 441, 36 Am. Rep. 643.

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state courts.[27] A decision of the Court of Appeals as to the construction of a federal statute will not be followed where the Supreme Court of the United States after such decision has made a contrary ruling; the federal decision will be followed.[28] The rule may not be absolute until the United States Supreme Court has undertaken the construction of the act, yet the decisions of the lower federal courts will generally be followed.[29] The opinions of the Interstate Commerce Commission, in matters respecting the interpretation and effect of the law under which the Commission was established, are entitled to great respect.[30] On the other hand, the federal courts, in construing a state statute, will generally adopt the construction given to it by the courts of the state where it was enacted.[31]

§ 113. Adoption of foreign construction of similar statute.—In determining the construction to be placed on an ambiguous statute, the courts will seek light from practically any source which may help in arriving at the meaning of the act. If a sister state or foreign country has a similar statute, the construction placed on it by its courts may be deemed of assistance in interpreting the domestic statute.[32] This rule is not especially forceful, however, except when the statute in question has been adopted from the foreign state or country. But, where the statute was

27. Hintermister v. Chittenango First Nat. Bank, 64 N. Y. 212; National Bank v. Lewis, 81 N. Y. 15; Buffalo German Ins. Co. v. Buffalo Third Nat. Bank, 29 App. Div. 137, 51 N. Y. Supp. 667; Jackson v. Shepard, 7 Cow. 88, 17 Am. Dec. 502; Bergen v. Patterson, 24 Hun 250; Matter of Chamavas, 21 N. Y. Supp. 104, 48 N. Y. St. Rep. 551. "On a question of statutory construction of an act of Congress which has been determined by the Supreme Court of the United States, subsequently arising in this court, we should feel bound to adopt and follow the construction of that tribunal on the principle of comity, although in a case where the ultimate jurisdiction is vested in this court. This principle is especially important to be observed in such a case, in view of the relation between the federal and state courts, not exercising, in all cases, a co-ordinate jurisdiction, but engaged in the administration of justice to a great extent between the persons who are citizens both of a state and of the United States. The decisions of the tribunals of a state as to the true construction of the statutes of its own sovereignty are followed by the Federal courts, and it would be most unseemly and produce great confusion if state courts should refuse to adopt the construction of the Supreme Court of the United States, of Federal statutes." York v. Conde, 147 N. Y. 486, 42 N. E. 193.

28. Manhattan Commercial Co. v. Paul, 216 N. Y. 481, 111 N. E. 76.

29. Ma' r of Chamavas, 21 N. Y. Supp. 104, 48 N. Y. St. Rep. 551.

30. Greenwald v. Weir, 130 App. Div. 696, 115 N. Y. Supp. 311.

31. Prentice v. Zane, 11 Law Rep. 204, 19 Fed. Cas. No. 11,383; Humphreyville Copper Co. v. Sterling, Brun Col. Cas. 3, 12 Fed. Cas. No. 6,872; U. S. v. Sherebeck, Hoff. Dec. 11, 27 Fed. Cas. No. 16,275.

32. Lipstein v. Provident Loan Soc., 154 App. Div. 732, 139 N. Y. Supp. 799; Barnes v. Huson, 60 Barb. 598; Bellegrade v. Union Bag, etc., Co., 96 App. Div. 577, 86 N. Y. Supp. 72.

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first enacted in a foreign country or state, and was then adopted by the legislature as a rule for this state, the construction which was placed on the act by the foreign jurisdiction is thought to have been adopted with the statute and is followed by the state courts.[33] For example, the Workmen's Compensation Act was taken largely from the English act, and, therefore, the construction placed on the statute by the English courts is given great weight by the courts of New York.[34] A statute adopted from a foreign jurisdiction may be construed as the foreign statute was understood, though no express adjudication on the question can be found in the decisions of the courts of the foreign jurisdiction.[35] But, even though a statute is adopted from a foreign jurisdiction, the interpretation placed on it by the foreign courts will not be followed when it is clear from the language and meaning of the statute that another interpretation was to obtain.[36] Another case when foreign decisions are entitled to considerable weight, is in the construction of the Negotiable Instruments Law and other uniform laws, which have been adopted in many states. It is important that such statutes not only should be uniform in language, but should have a uniform interpretation in the several states. When, therefore, a question arises under one of such statutes and the courts of this state have not passed on the question, it is thought to be the duty of the courts to adopt and follow the interpretation announced by the courts of other commonwealths.[37]

Amendatory Statutes

§ 114. Original statute and amendment read together.— The rule which requires that all parts of an act be construed together[38] is extended so as to apply to original statutes as amended. The original enactment and the amendment are read

33. Lipstein v. Provident Loan Soc., 154 App. Div. 732, 139 N. Y. Supp. 799; Matter of Moore, 169 App. Div. 177, 154 N. Y. Supp. 620; Matter of Newman, 169 App. Div. 745, 155 N. Y. Supp. 665; Matter of De Filippis, 170 App. Div. 153, 155 N. Y. Supp. 761; Anderson v. Speers, 21 Hun 568; Clark v. Dewey, 5 Johns. 251; Hotchkiss v. McVickar, 12 Johns. 403; Bellegrade v. Union Bag, etc., Co., 90 App. Div. 577, 86 N. Y. Supp. 72.

34. Matter of Moore, 169 App. Div. 177, 154 N. Y. Supp. 620; Matter of Newman, 169 App. Div. 745, 155 N. Y. Supp. 665; Matter of De Filippis, 170 App. Div. 153, 155 N. Y. Supp. 761.

35. People v. Irvin, 21 Wend. 128.

36. Jackson v. Thurman, 6 Johns. 322.

37. Brown v. Brown, 91 Misc. 220, 154 N. Y. Supp. 1098.

38. See supra, § 59.

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together,[39] and viewed as one act passed at one time.[40] For example, for the purpose of determining the effect of the different provisions of the Code of Civil Procedure with respect to each other, they are deemed to have been enacted simultaneously.[41] In construing the amended provision of a statute, reference may be had to the other provisions of which it becomes a part, to ascertain its object and purpose in that relation.[42] It is also legitimate, when a provision is taken from a prior statute, to examine such statute and see what meaning is attached to the words as they were therein used.[43] In considering the meaning and effect of the amendatory act, it is desirable to have in mind the previous condition of the law on the subject.[44] Not only does the prior statute explain the meaning of the amendment thereto, but the amendment may be useful as an indicia of the legislative intent

39. Schenck v. Andrews, 57 N. Y. 133; Crane v. Genin, 60 N. Y. 127; Lyon v. Manhattan R. Co., 142 N. Y. 298, 37 N. E. 113, 25 L. R. A. 402; Morgan v. Hedstrom, 164 N. Y. 224, 58 N. E. 26; Miller v. McKeon, 15 App. Div. 133, 44 N. Y. Supp. 371; Gilfeather v. Grout, 101 App. Div. 150, 91 N. Y. Supp. 533; Vinson v. Saratoga Springs Sewer, etc., Commission, 158 App. Div. 132, 142 N. Y. Supp. 598; People v. Draper, 169 App. Div. 479, 154 N. Y. Supp. 1034; Bloomingdale v. Seligman, 22 Abb. N. Cas. 98, 3 N. Y. Supp. 243; People v. New York, etc., Ferry Co., 7 Hun 105; Dubois v. Poughkeepsie, 22 Hun 117; In re New York Cable R. Co., 40 Hun 1; Goldman v. Kennedy, 49 Hun 157, 14 Civ. Pro. 392, 21 Abb. N. Cas. 362, 1 N. Y. Supp. 599, 17 N. Y. St. Rep. 433; People v. Reliance Marine Ins. Co., 70 Hun 554, 24 N. Y. Supp. 190; Matter of Wallace, 36 Misc. 1, 72 N. Y. Supp. 445; Campbell v. People, 8 Wend. 636. But where an amendatory act contains a clause reserving pending proceedings from its effect, the original act and amendatory act are not read together so as to make the reservation applicable to the entire act; it is only the part added by the amendment that is inapplicable on pending proceedings. Homnyack v. Prudential Ins. Co., 194 N. Y. 456, 87 N. E. 769.

40. Lyon v. Manhattan R. Co., 142 N. Y. 298, 37 N. E. 113, 25 L. R. A. 402; Morgan v. Hedstrom, 164 N. Y. 224, 58 N. E. 26; Vinson v. Saratoga Springs Sewer, etc., Commission, 158 App. Div. 132, 142 N. Y. Supp. 598; People v. Draper, 169 App. Div. 479, 154 N. Y. Supp. 1034; Allen's Estate, 7 Civ. Pro. 159; Goldman v. Kennedy, 49 Hun 157, 14 Civ. Pro. 392, 21 Abb. N. Cas. 362, 1 N. Y. Supp. 599, 17 N. Y. St. Rep. 433; People v. Reliance Marine Ins. Co., 70 Hun 564, 24 N. Y. Supp. 190; Matter of Wallace, 36 Misc. 1, 72 N. Y. Supp. 445. The principle stated in the test is not to be understood as interfering with the proposition that amendatory statutes are, as a general rule, not retroactive. This proposition is discussed in another paragraph. See supra, § 19.

41. Gilfeather v. Grout, 101 App. Div. 150, 91 N. Y. Supp. 533; Schamberg v. Whitman, 75 Misc. 215, 135 N. Y. Supp. 262, affirmed 151 App. Div. 939, 135 N. Y. Supp. 1141. In the case of the Code, the rule stated in the text is enacted by section 3355.

42. Miller v. McKeon, 15 App. Div. 133, 44 N. Y. Supp. 371.

43. Hanrahan v. Terminal Station Commission, 152 App. Div. 349, 136 N. Y. Supp. 1001, reversed on other grounds, 206 N. Y. 494, 100 N. E. 414.

44. Gilman v. Tucker, 128 N. Y. 190, 22 N. E. 1040, 26 A. S. R. 464, 13 L. R. A. 304; Ahlers v. Clement, 141 App. Div. 891, 127 N. Y. Supp. 61, affirmed, 201 N. Y. 592, 95 N. E. 1122. And see, supra, par. 95. "The amendment must be given a reasonable interpretation in the light of the law as it exists and existed at the time of its passage." Assets Realization Co v. Howard, 70 Misc. 651, 127 N. Y Supp. 798,

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in the enactment of the prior statute, for a change in the wording of a statute generally indicates a change in meaning.[45] Two statutes *in pari materia* may be read together though the later one is not an actual amendment of the earlier;[46] and statutes upon the same subject matter are none the less *in pari materia* because one purports to amend another. Hence, the rule now under consideration may be sustained on the ground that the acts are *in pari materia,* were there no other ground to support it.[47] In reading the original act and the amendatory act together, no part of either is to be held inoperative, if they can be made to stand and work together.[48] But so far as there is any repugnancy between the original act and the amending act, the original must be deemed to have been repealed by the amendment.[49] As the later expression of the legislative will, the amendment repeals by implication such provisions as cannot be reconciled therewith:[50]

§ 115. Significance of change in language.—It is a well settled rule that, in a revision of statutory law, a mere change in the phraseology of a statute does not import a change in the construction of the statute.[51] But the same rule is not applicable when the legislature deliberately makes a change in a single section, or a few sections, of the law.[52] Referring to this class of isolated amendments, it might happen, of course, that the legislature, in attempting to amend a statute, would by the use of inapt words really effect no change in the meaning of the statute; but a construction of a statute which imputes such an inoffensive folly to the lawmaking body is to be avoided.[53] Ordinarily, when

45. Richardson v. Warner, 13 Hun 13. And see infra, § 115, as to the significance of a change in language.

46. See supra, § 67.

47. See Crane v. Genin, 60 N. Y. 127; People v. New York, etc., Ferry Co., 7 Hun 105.

48. Lyon v. Manhattan R. Co., 142 N. Y. 298, 37 N. E. 113, 25 L. R. A. 402; People v. De Witt, 59 App. Div. 493, 69 N. Y. Supp. 366, affirmed 167 N. Y. 575, 60 N. E. 1118; Vinson v. Saratoga Springs Sewer, etc., Commission, 158 App. Div. 132, 142 N. Y. Supp. 598; Matter of Wallace, 36 Misc. 1, 72 N. Y. Supp. 445.

49. In re Livingston St., 82 N. Y. 621; People v. Angle, 109 N. Y. 564, 17 N. E. 413.

50. See infra, § 170 et seq. as to repeals by implication.

51. See infra, § 184.

52. When, in 1895, it became necessary to revise the Code of Civil Procedure to harmonize it with the provisions of the new constitution, and by one chapter of the laws of that year, 225 sections were amended and 71 repealed, the change in practice was thought to be a revision and that a change in language of a section did not import a change in the rule. Henavie v. New York Cent., etc., R. Co., 154 N. Y. 278, 48 N. E. 525.

53. Lamport v. Smedley, 213 N. Y. 82, 106 N. E. 922; People v. Weinstock, 117 App. Div. 168, 102 N. Y. Supp. 349; Rue v. Alter, 5 Denio 119. On the other hand, the intention of the legislature and the general purpose of an act are not to be set aside by a single amendment of the law. People v. Kilbourn, 68 N. Y. 479.

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the legislature has made an amendment, it is thought that some purpose is intended thereby, and the courts should seek the purpose and construe the law so as to effectuate the purpose of the change.[54] A material change in the phraseology of an act is generally regarded as a legislative construction that the law so amended did not originally embrace the amended provisions.[55] And, when provisions contained in an original act are omitted from an amendatory act, it is reasonable to presume that they were intentionally omitted.[56] Yet the force to be given subsequent legislation as affecting prior legislation depends somewhat upon the time of the enactment and the surrounding circumstances, including the history of the various enactments.[57] If it follows soon after controversies have arisen as to the interpretation of the original act, it may well be construed as explanatory of the ambiguities therein. But if the change takes place after a considerable lapse of time and after the intervention of other sessions of the legislature, it indicates an intention to supply some provisions not embraced in the former statute.[58] The intervention of judicial decisions may also be a material element in determining the effect of an amendment. If a term or clause used in the original statute has been judicially construed, the retention of such term or clause in a subsequent amendatory act generally requires that it shall receive the same construction;[59]

54. James v. Patten, 6 N. Y. 9, 55 Am. Dec. 376; Coster v. Albany, 43 N. Y. 399; Clason v. Baldwin, 129 N. Y. 183, 29 N. E. 226; Lamport v. Smedley, 213 N. Y. 82, 106 N. E. 922; People v. Buccolieri, 91 Misc. 156, 152 N. Y. Supp. 707; People v. Schoonmaker, 63 Barb. 44; Rue v. Alter, 5 Denio 119; Taggard v. Roosevelt, 2 E. D. Smith 100, 8 How. Pr. 141; Russell v. Ostrander, 30 How. Pr. 93; Richardson v. Warner, 13 Hun 13; People v. Fire Com'rs, 23 Hun 317; Brooklyn Crosstown R. Co. v. Brooklyn, 37 Hun 413; DeWolf v. Day, 39 Hun 484; Head's Iron Foundry v. Sanders, 77 Hun 432, 28 N. Y. Supp. 808; People v. Weinstock, 117 App. Div. 168, 102 N. Y. Supp. 349.

55. People v. Davenport, 91 N. Y. 574. In People v. Cricuoli, 157 App. Div. 201, 141 N. Y. Supp. 855, a statute relating to dangerous weapons used the word "knife" but not the word "razor." Thereafter an amendment brought in the word "razor," and it was held that the term "knife" in the original statute would not be construed as including a razor, for the legislature had made a contrary interpretation of its own language.

56. Clason v. Baldwin, 129 N. Y. 183, 29 N. E. 226; In re Southworth, 5 Hun 55; People v. Fire Com'rs, 23 Hun 317; Matter of Wheelock, 51 Hun 640 mem., 3 N. Y. Supp. 890, affirmed without opinion, 121 N. Y. 664, 24 N. E. 380. It may, however, appear that an omission from an amendatory act was due entirely to clerical error or inadvertence; and, in such a case, the omission is one which the courts will supply. See supra, § 74.

57. Ahlers v. Clement, 141 App. Div. 891, 127 N. Y. Supp. 61, affirmed 201 N. Y. 592, 95 N. E. 1122; People v. Buccolieri, 91 Misc. 156, 152 N. Y. Supp. 707.

58. Peeople v. Davenport, 91 N. Y. 574.

59. People v. Donohue, 15 Hun 418; Hakes v. Peck, 30 How. Pr. 104. And see supra, § 105, as to the legislative use of terms judicially construed

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but an amendment substituting a different term forcefully indicates that the judicial decision did not correspond with legislative intent, and that a different interpretation should be had.[60] Thus, if a statute is held by the courts to be discretionary and an amendment using the word "shall" is made almost immediately after the decision, an intention is indicated of making the statute peremptory instead of discretionary.[61] So, too, where the court in the construction of a statute has given considerable significance to certain phrases, the re-enactment of the statute with the omission of such phrases, tends to show that the legislature intended a different rule.[62]

§ 116. Amendments in form of re-enactments.— It is frequent legislative practice to amend a section of a statute by providing that it shall be "amended as follows" and then stating the section in the form desired. As to the parts omitted from the old statute, though the courts hesitate to declare repeals by implication,[63] it is clear that generally such a repeal is effected.[64] So, too, the provisions of the old law which are inconsistent with the new act as amended, are impliedly repealed.[65] It is also clear, notwithstanding an early common law rule to the contrary,[66] that the changes made by the amendment do not date back to the enactment of the original statute, but their force commences at the time the amending act goes into effect.[67] As to the parts of the old act retained by the amending act, either by the same

60. James v. Patten, 6 N. Y. 9, 55 Am. Dec. 376; Pulitzer v. New York, 48 App. Div. 6, 62 N. Y. Supp. 587.

61. Rosenblum v. Gorman, 21 App. Div. 618, 47 N. Y. Supp. 754. As to the distinction between discretionary and peremptory statutes, see supra, §§ 12–16.

62. Clason v. Baldwin, 129 N. Y. 183, 29 N. E. 226.

63. See supra, § 170.

64. Moore v. Mausert, 49 N. Y. 332; In re Livingston St., 82 N. Y. 621; Davidson v. Witthaus, 106 App. Div. 182, 94 N. Y. Supp. 428; Matter of Connellan, 25 Misc. 592, 56 N. Y. Supp. 157; Bock v. New York, 31 Misc. 55, 64 N. Y. Supp. 777; Guaranty Trust Co. v. Troy Steel Co., 33 Misc. 484, 68 N. Y. Supp. 915; Matter of Rochester Trust, etc., Co., 42 Misc. 581, 87 N. Y. Supp. 628; Angel v. Hume, 17 Hun 374; McDermott v. Nassau Electric R. Co., 85 Hun 422, 32 N. Y. Supp. 884, affirmed without opinion, 147 N. Y. 700, 42 N. E. 724; Wirt v. Allegany County, 90 Hun 205, 35 N. Y. Supp. 887; People v. England, 91 Hun 152, 36 N. Y. Supp. 534; People v. Hegeman, 51 Hun 644, 4 N. Y. Supp. 352, 22 N. Y. St. Rep. 109.

65. In re Prime, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713; Bank of Metropolis v. Faber, 150 N. Y. 200, 44 N. E. 779; Davidson v. Witthaus, 106 App. Div. 182, 94 N. Y. Supp. 428; Ottman v. Hoffman, 6 Misc. 56, 26 N. Y. Supp. 881; Griggs v. Guinn, 29 Abb. N. Cas. 144, 23 N. Y. Civ. Pro. 46, 21 N. Y. Supp. 451; People v. Upson, 79 Hun 87, 29 N. Y. Supp. 615, affirmed on opinion below, in People v. Webster, 147 N. Y. 716 mem., 42 N. E. 725.

66. See Benton v. Wickwire, 54 N. Y. 226. See supra, § 19, as to the retroactive force of amendatory statutes.

67. Ely v. Holton, 15 N. Y. 595; Moore v. Mausert, 49 N. Y. 332; Mil-

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or equivalent words, though technically they may be said to have been repealed and re-enacted, they are nevertheless construed as continuing without interruption, so that rights under the old law are preserved though the amended statute furnishes the only rule for future cases.[68] The statute, so far as such retained provisions are concerned, is not deemed a new law, but is considered the continuation of the former act.[69] In other words, the portions which are repeated are considered as having been the law from the time they were first enacted, and the new portions are to be understood as enacted at the time the amended act took effect.[70] The word "hereafter" occurring in a statute amended in this manner is to be construed distributively; as to the original provisions, it means subsequent to their enactment; as to the new provisions, it means subsequent to the time the act introducing them took effect.[71] The original law, though generally thought to be merged in the amending statute,[72] may, however, under special circumstances, be considered in force so as to be subject to repeal or amendment.[73] The general rule on this subject is now declared by section 95 of the General Construction Law

ler's Estate, 110 N. Y. 216, 18 N. E. 139; Dodin v. Dodin, 16 App. Div. 42, 44 N. Y. Supp. 800; Duanesburgh v. Jenkins, 40 Barb. 574; Calhoun v. Delhi, etc., R. Co., 28 Hun 379.

68. Ely v. Holton, 15 N. Y. 595; Moore v. Mausert, 49 N. Y. 332; In re Livingston St., 82 N. Y. 621; Miller's Estate, 110 N. Y. 216, 18 N. E. 139; In re Prime, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713; People v. Wilmerding, 136 N. Y. 363, 32 N. E. 1099; Matter of Cullinan, 97 App. Div. 122, 89 N. Y. Supp. 683; People v. Dooling, 141 App. Div. 31, 125 N. Y. Supp. 783; Thacher v. Steuben County, 21 Misc. 271, 47 N. Y. Supp. 124, reversed without opinion, 31 App. Div. 634, 53 N. Y. Supp. 1116; Bock v. New York, 31 Misc. 55, 64 N. Y. Supp. 777; Moran v. Lydecker, 27 Hun 582; Calhoun v. Delhi, etc., R. Co., 28 Hun 379; People v. Carr, 36 Hun 488; Nash v. White's Bank, 37 Hun 57; McMillan v. Bellows, 37 Hun 214; In re Staten Island Rapid Transit Co., 47 Hun 396; Mortimer v. Chambers, 63 Hun 335, 17 N. Y. Supp. 874; People v. Upson, 79 Hun 87, 29 N. Y. Supp. 615; Moore v. Mausert, 5 Lans. 173; affirmed 49 N. Y. 332; Ottman v. Hoffman, 7 Misc. 714, 28 N. Y. Supp. 28; Thacher v. Steuben County, 21 Misc. 271, 47 N. Y. Supp. 124; People v. Stillings, 76 App. Div. 143, 78 N. Y. Supp. 942. The general rule stated in the text is deemed applicable to amendments to the court rules. In re Warde, 154 N. Y. 342, 48 N. E. 513.

69. People v. Montgomery County, 67 N. Y. 109, 23 Am. Rep. 94; People v. Briggs, 114 N. Y. 56, 20 N. E. 820; People v. Dooling, 141 App. Div. 31, 125 N. Y. Supp. 783; Moran v. Lydecker, 27 Hun 582; Nash v. White's Bank, 37 Hun 57; Matter of Arnett, 49 Hun 599, 2 N. Y. Supp. 428; Matter of Thompson, 14 N. Y. St. Rep. 487; People v. Stillings, 76 App. Div. 143, 78 N. Y. Supp. 942.

70. Ely v. Holton, 15 N. Y. 595; Moore v. Mausert, 49 N. Y. 332; Gibbs v. Queen Ins. Co., 63 N. Y. 114, 20 Am. Rep. 513; In re Prime, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713; Matter of Arnett, 49 Hun 599, 2 N. Y. Supp. 428; Matter of Thompson, 14 N. Y. St. Rep. 486; Mortimer v. Chambers, 63 Hun 335, 17 N. Y. Supp. 874.

71. Ely v. Holton, 15 N. Y. 595; In re Peugnet, 67 N. Y. 441; Matter of Thompson, 14 N. Y. St. Rep. 486.

72. See the cases above cited.

73. In re Rochester, 66 N. Y. 413.

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providing: "The provisions of a law repealing a prior law, which are substantial re-enactments of provisions of the prior law, shall be construed as a continuation of such provisions of such prior law, modified or amended according to the language employed, and not as new enactments."

§ 117. Effect on amendment of repeal of or reference to original act.— It is provided by statute that "if any provision of a law be repealed and in substance re-enacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision."[74] But, regardless of the statute, it has been held that, when a statute is amended "to read as follows" or is otherwise re-enacted, a reference to the original statute imports a reference to the re-enacted statute, unless a contrary intention is indicated.[75] Whether an amendment made to an original act after such original act has been incorporated in an independent statute by reference, will affect the incorporating act, is discussed in another paragraph.[76] Some difficulty has been experienced in determining the state of the statute law when an enactment has been repealed after an amendment thereto has been made and the amendment is not mentioned in the repealing statute. It is clear that, when a later statute amends "to read as follows" an earlier act, without noticing an intermediate act amending the earlier act by the insertion of a new clause, such new clause is repealed if not embodied in the later statute. The failure to insert the clause operates as an implied repeal thereof.[77] And when an original act has been repealed or merged in an amendatory act, it does not necessarily lose its identity; it may nevertheless be amended "to read as follows" and the latest act will be effective.[78] But it seems to be a general rule that, when a statute repeals an earlier statute and enacts another covering the same ground, the amendments to the earlier are also repealed.[79] Especially is this so, when the repealing clause expressly recites that amendatory acts are included in the

74. General Construction Law, § 80.

75. Westchester County v. Curley, 69 N. Y. 608, 9 Abb. N. Cas. 100; Mundy v. Excise Com'rs, 9 Abb. N. Cas. 117. See also People v. Peck, 32 App. Div. 624, 52 N. Y. Supp. 259, affirmed 157 N. Y. 51, 51 N. E. 412.

76. See supra, § 111.

77. Griggs v. Guinn, 29 Abb. N. Cas. 144, 23 Civ. Pro. 46, 21 N. Y. Supp. 451.

78. See infra, § 167.

79. People v. Peck, 32 App. Div. 624 52 N. Y. Supp. 259, affirmed 157 N Y. 51, 51 N. E. 412; Welstead v. Jennings, 104 App. Div. 179, 93 N. Y. Supp. 339, affirmed without opinion, 185 N. Y. 588, 78 N. E. 1114. See

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repeal.[80] But, if a statute has been twice re-enacted, the repeal of the first re-enactment will not affect the second re-enactment.[81]

§ 118. Effect upon original act of repeal of amendatory act.—It is provided in the General Construction Law, section 92, that "the repeal hereafter or by this chapter of any provision of a statute, which amends a provision of a prior statute, leaves such prior provision in force unless the amendatory statute be a substantial re-enactment of the statute amended." This statute is taken verbatim from section 31 of the Statutory Construction Law of 1892. But these statutes seem to have made slight, if any, change in the common law rule as to the effect which the repeal of an amendatory act would have on the original act. It had been the general rule for many years that, when a statute was amended "to read as follows," or was otherwise re-enacted, the earlier statute was merged in the later; and when the later was repealed, both were gone.[82] But this doctrine was not enforced arbitrarily; and, when it appeared to be the legislative intent that the original act should not be merged in the amendatory act, the repeal of the amendatory act did not affect the original act.[83] Before the enactment of section 90 of the General Construction Law and its predecessor in the Statutory Construction Law, it was the general rule that the repeal of a repealing statute would revive the original enactment. When such was the law, it was held that the repeal of an amendatory statute (when the amendment was not a re-enactment in effect) revived the original act.[84]

Provisos and Exceptions

§ 119. Distinction between proviso and exception.—Doubtless there is a technical distinction between an exception and a proviso, as an exception should comprise that which would otherwise be included in the category from which it is expected, and

also Matter Van Wyck, 3 City Hall Rec. 113.

80. People v. Potter, 40 Misc. 485, 82 N. Y. Supp. 649. It is provided in the General Construction Law, § 91, that the repeal by the Consolidated Laws of a statute includes a statute amendatory of the statute repealed.

81. People v. Assessors, 8 Abb. Pr. (N. S.) 150.

82. People v. Montgomery County, 67 N. Y. 109, 23 Am. Rep. 94; People v. Wilmerding, 136 N. Y. 363, 32 N. E. 1099; Bank of Metropolis v. Faber, 1 App. Div. 341, 37 N. Y. Supp. 423, affirmed, 150 N. Y. 200, 44 N. E. 779; McMillan v. Bellows, 37 Hun 214.

83. Bank of Metropolis v. Faber, 150 N. Y. 200, 44 N. E. 779.

84. In re Livingston St., 82 N. Y. 621; Croner v. Cowdrey, 19 N. Y.

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the office of a proviso is either to except something from the enacting clause or to qualify or restrain its generality, or to exclude some ground of misinterpretation of it, as extending to cases not intended to be brought within its operation; but there are a great many examples where the distinction is disregarded and where the words are used as if they were of the same signification.[85] Technically, an exception exempts something absolutely from the operation of a statute by express words in the enacting clause; a proviso defeats its operation conditionally. An exception takes out of the statute something that otherwise would be part of the subject matter; a proviso avoids them by way of defeasance or excuse.[86] An exception is generally a part of the enactment itself, absolutely excluding from its operation some subject or thing that otherwise would fall within its scope. But when the enactment is modified by engrafting upon it a new provision, by way of amendment, providing conditionally for a new case, it is in the nature of a proviso.[87] In stating a cause of action arising upon a statute, it is an ancient rule that where an exception is incorporated in the body of the clause of a statute, he who pleads the clause ought to plead the exception. But where there is a clause for the benefit of the pleader, followed by a proviso which is against him, he may plead the clause and leave it to his adversary to show the proviso.[88] The reason upon which this rule of pleading rests seems to be that when a party relies upon the enacting clause of a statute containing an exception, as the foundation of his action, he cannot logically state his case unless he negatives the exception. But if the modifying words are no part of the enacting clause, and are to be found in some other part of the statute, or in some subsequent statute, it is otherwise, and he may then state his case in the words of the enacting clause, and it will be *prima facie* sufficient. When the reason of the rule and the necessity for pleading the negative is borne in mind, it is not very important to deal with the somewhat vague and shadowy distinctions, which are to be found in the books, between an exception and a proviso.

Supp. 908. See also Ottman v. Hoffman, 6 Misc. 56, 26 N. Y. Supp. 881. And see infra, § 169, as to the revival of a statute by the repeal of the repealing act.

85. U. S. v. Cook, 17 Wall. 168, 21 U. S. (L. ed.) 538.

86. Rowell v. Janvrin, 151 N. Y. 60, 45 N. E. 398.

87. Rowell v. Janvrin, 151 N. Y. 60, 45 N. E. 398. See also In re Second Ave. M. E. Church, 66 N. Y. 395.

88. Harris v. White, 81 N. Y. 532; Rowell v. Janvrin, 151 N. Y. 60, 45 N.

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But the distinction, however difficult to state, has always been recognized.[89]

§ 120. Provisos.— It is the province of a proviso to restrain the enacting clause, to take something back from the power first declared, to except something which would otherwise have been within it, or in some measure to modify the enacting clause.[90] Where a general statute applicable to the entire state was repealed by a special statute so far as it related to New York city, and the special statute contained a proviso relative to certain corporations, it was held that the proviso related exclusively to New York city.[91] The enactment and the proviso are to be taken and construed together for the purpose of reaching the true interpretation of the statute,[92] giving to the words of the proviso their natural meaning.[93] Ordinarily, a proviso makes no affirmative grant of power. But, when a statute is framed in negative terms, a proviso likewise in negative terms may be found to make an affirmative grant.[94] That two negatives make an affirmative is as true in the construction of statutes as in literary criticism. Where one proviso to a statute is expressly stated, others, as a rule, will not be implied.[95] *Expressio unius est exclusio alterius.*[96] A saving clause or exception which is repugnant to the purview of the act is void,[97] but the rule seems to be different in the case of a repugnant proviso. Such a proviso is not void, but, on the contrary, stands as the last expression of the legislature.[98]

§ 121. Exceptions.—An exception is generally a part of the enactment itself, absolutely excluding from its operation some subject or thing that otherwise would fall within its scope.[99] Thus, when there is a prohibition in general words and a saving of particular things, there is a strong implication that what is excepted would have been within the prohibition if it had not

E. 398. See also People v. Manhattan Co., 9 Wend. 351.

89. Rowell v. Janvrin, 151 N. Y. 60, 45 N. E. 398.

90. In re Second Ave. M. E. Church, 66 N. Y. 395; Mackmull v. Brandlein, 152 App. Div. 733, 137 N. Y. Supp. 607; Matter of Webb, 24 How. Pr. 247.

91. Troy Fire Dept. v. Bacon, 2 Abb. App. Dec. 127.

92. LeFevre v. Lefevre, 59 N. Y. 434.

93. People v. Kelly, 7 Robt. 592.

94. Manning v. Keenan, 73 N. Y. 45.

95. In re New York Cable R. Co., 40 Hun 1.

96. As to the doctrine of expressio unius est exclusio alterius, see infra, § 130.

97. See infra, § 121.

98. Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53.

99. Rowell v. Janvrin, 151 N. Y. 60, 45 N. E. 398.

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been excepted, and thus the prohibitory words may receive a more comprehensive construction than they would otherwise have received.[1] If an exception or saving clause in a statute is repugnant to the main body of the statute, the exception or saving clause is void.[2] It is the general rule in the construction of conveyances as well as statutes that, when an exception has nothing upon which to operate or when it becomes impossible, the exception and not the principle grant is void.[3] But the exception and the enacting clause of the statute should be construed together and harmonized, if possible.[4] When one or more exceptions are expressly made in a statute, it is a fair inference that the legislature intended that no other exceptions should be attached to the act by implication.[5] Where the enacting clause of a statute is expressed in negative language, an exception thereto may have an affirmative effect. For example, when a statute provides that certain titles of a general law, excepting certain sections thereof, shall not apply to a certain county, the effect may be to make the excepted sections applicable to such county.[6]

Interpretation of Words and Phrases

§ 122. Every word to be given effect.—It is an established canon in the interpretation of statutes that all parts of an act are to be construed together[7] and harmonized, if possible.[8] To reach this end, it is a general rule that every part of the act is to receive some consideration in determining its meaning.[9] As was said by Lord Coke, "The good expositor makes every sentence have

1. Tinkham v. Tapscott, 17 N. Y. 141.

2. Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53; Dean v. Gridley, 11 Wend. 167.

3. Rome v. Knox, 14 How. Pr. 268.

4. Dean v. Gridley, 11 Wend. 167.

5. Hering v. Clement, 133 App. Div. 293, 117 N. Y. Supp. 747, affirmed 196 N. Y. 218, 89 N. E. 450; Wood v. Mather, 38 Barb. 473, affirmed 44 N. Y. 249.

6. Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489.

7. See supra, § 59.

8. See supra, § 60.

9. Dwight v. Enos, 9 N. Y. 470; People v. Draper, 15 N. Y. 532; Kentucky Commercial Bank v. Varnum, 49 N. Y. 269; Verona Cent. Cheese Co. v. Murtaugh, 50 N. Y. 314; People v. Tax Com'rs, etc., 76 N. Y. 64; People v. McGloin, 91 N. Y. 241; People v. Matsell, 94 N. Y. 179; People v. Angle, 109 N. Y. 564, 17 N. E. 413; People v. Tanner, 128 N. Y. 416, 28 N. E. 364; Palmer v. Van Santvoord, 153 N. Y. 612, 47 N. E. 915, 38 L. R. A. 402; People v. Feitner, 168 N. Y. 360, 61 N. E. 280; Kuhn v. Knight, 190 N. Y. 339, 83 N. E. 293; Wehrenberg v. New York, etc., R. Co., 124 App. Div. 205, 108 N. Y. Supp. 804; Ft. Edward v. Hudson Val. R. Co., 127 App. Div. 438, 111 N. Y. Supp. 753; Baxter v. York Realty Co., 128 App. Div. 79, 112 N. Y. Supp. 455, affirmed without opinion, 198 N. Y. 521, 92 N. E. 1078; People v. Glynn, 128 App. Div. 257, 112 N. Y. Supp. 695; Clary v. Fitzgerald, 155 App. Div. 659, 140 N. Y. Supp. 536, affirmed without opinion, 213 N. Y. 696, 107 N. E. 1075; Schinzel v. Best, 45 Misc. 455, 92 N. Y.

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its operation to suppress all mischiefs; he gives effect to every word of the statute; he does not construe it so that anything should be vain and superfluous, nor yet make exposition against express words, but so expounds it that one part may stand agreeable with the other and all may stand together." [10] It is not to be supposed that the legislature will deliberately place words or phrases in a statute without any purpose in view. On the contrary, it is said, "In the attempt to ascertain the intention of the legislature, it is a just rule, always to be observed, that the court shall assume that every provision of the statute was intended to serve some useful purpose." [11] Statutes are to be so interpreted as to give effect to every part thereof and leave each part some office to perform, and any construction which deprives any part of a statute of effect and meaning, when it is susceptible of another interpretation giving effect to every part, is avoided.[12] But the force of words and phrases, like other questions of interpretation, is to be determined in accordance with the intent of the lawmakers; and, when the intent is obvious, a single word or expression may be disregarded as of no force.[13] When the use of certain words in a statute is inconsistent with the apparent intention of the legislature, or makes the clause meaningless or absurd, it is the duty of the courts to reject those words, when, by rejecting them, the clear intention of the legislature is carried out.[14] Moreover, it is recognized by the courts that the drafters of

Supp. 754; Thompson v. Gimbel Bros., 71 Misc. 126, 128 N. Y. Supp. 210, affirmed 145 App. Div. 436, 129 N. Y. Supp. 1025, affirmed without opinion, 207 N. Y. 659, 100 N. E. 794; Bloomingdale v. Seligman, 22 Abb. N. Cas. 98, 3 N. Y. Supp. 243; Hascall v. Madison University, 8 Barb. 174; Heeney v. Brooklyn Benev. Soc., 33 Barb. 360, affirmed 39 N. Y. 333; Chamberlain v. Western Transp. Co., 45 Barb. 218; Beebe v. Hutton, 47 Barb. 187; Roosevelt v. Godard, 52 Barb. 533; Matter of Chardavoyne, 5 Dem. 466, 10 N. Y. St. Rep. 193, 26 N. Y. Wkly. Dig. 352; Wilson v. Allen, 4 How. Pr. 54; Geraty v. Reid, 13 Hun 313; People v. Keese, 27 Hun 483; Adams v. Cavanaugh, 37 Hun 232; Oswego v. Collins, 38 Hun 171; People v. Merrick, 61 Hun 396, 16 N. Y. Supp. 246, 41 N. Y. St. Rep. 15; New Rochelle v. Clark, 65 Hun 140, 19 N. Y. Supp. 989; Lowman v. Sprague, 73 Hun 408, 26 N. Y. Supp. 568; People v. Martin, 20 N. Y. Supp. 585, 48 N. Y. St. Rep. 288; People v. Kelly, 7 Robt. 592; Ayres v. Methodist Church, 3 Sandf. 351.

10. Palmer v. Van Santvoord, 153 N. Y. 612, 47 N. E. 915, 38 L. R. A. 402.

11. Allen v. Stevens, 161 N. Y. 122, 55 N. E. 568.

12. People v. Angle, 109 N. Y. 564, 17 N. E. 413; Rochester v. Coe, 25 App. Div. 300, 49 N. Y. Supp. 502; Binninger v. New York, 80 App. Div 438, 81 N. Y. Supp. 226.

13. Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652; People v. Draper, 169 App. Div. 479, 154 N. Y. Supp. 1034; Wilson v. Allen, 4 How. Pr. 54; People v. Martin, 20 N. Y. Supp. 585, 48 N. Y. St. Rep. 288; People v. Hilliard, 85 App. Div. 507, 83 N. Y. Supp. 204.

14. Gusthal v. Strong, 23 App. Div. 315, 48 N. Y. Supp. 652.

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statutes do not always use the most apt words to express their intent; and that words are frequently used in a statute which are not necessary, but are to some extent superfluous.[15] It is frequently the case that certain words may be left out of a statute without changing its meaning; and, at the same time, the meaning of the legislature is more easily and certainly ascertained if they are retained.[16] The same idea is frequently repeated in different words; but, although different language may be used, it is not necessary in all cases to attach a different meaning to it.[17] Clauses which have no force are frequently inserted in an act, such as, for example, a provision that the act shall not affect a right conferred by the United States or by the state constitution. Such a provision is inserted as a matter of form from an abundance of caution, not from mature consideration of its necessity, and it has but slight effect, if any, on the interpretation to be given the statute.[18]

§ 123. Words of ordinary import.— It is a general rule in the interpretation of statutes that the legislative intent is primarily to be determined from the language used in an act, considering the language in its most natural and obvious sense.[19] From this general rule, it is deducible that words of ordinary import are to be construed according to their ordinary and popular significance.[20] That is to say, as a general proposition, words which

15. McGaffin v. Cohoes, 74 N. Y. 387, 30 Am. Rep. 307; New York v. Manhattan R. Co., 143 N. Y. 1, 37 N. E. 494.

16. Carpenter v. People, 8 Barb. 603.

17. New York v. Manhattan R. Co., 143 N. Y. 1, 37 N. E. 494.

18. Columbian Mfg. Co. v. Vanderpoel, 4 Cow 556.

19. See supra, § 54.

20. James v. Patten, 6 N. Y. 9, 55 Am. Dec. 376; Newell v. People, 7 N. Y. 9; People v. Denniston, 23 N. Y. 247; Chamberlain v. Western Transp. Co., 44 N. Y. 305, 4 Am. Rep. 681; Ramaley v. Leland, 43 N. Y. 539, 3 Am. Rep. 728; In re Fox, 52 N. Y. 530, 11 Am. Rep. 751; In re O'Neil, 91 N. Y. 516; Mangam v. Brooklyn, 98 N. Y. 585, 50 Am. Rep. 705; Polhemus v. Fitchburg R. Co., 123 N. Y. 502, 26 N. E. 31; Henavie v. New York Cent., etc., R. Co., 154 N. Y. 278, 48 N. E. 525; Bush v. Delaware, etc., R. Co., 166 N. Y. 210, 59 N. E. 838; People v. Langan, 196 N. Y. 551, 90 N. E. 1164; People v. Waring, 5 App. Div. 311, 39 N. Y. Supp. 193; People v. Dohling, 6 App. Div. 86, 39 N. Y. Supp. 765; Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 14; McGrath v. Grout, 69 App. Div. 314, 74 N. Y. Supp. 782, affirmed 171 N. Y. 7, 63 N. E. 547; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; People v. Cox, 106 App. Div. 299, 94 N. Y. Supp. 526; People v. Bashford, 128 App. Div. 351, 112 N. Y. Supp. 502; People v. Lane, 132 App. Div. 406, 116 N. Y. Supp. 990, affirmed without opinion, 196 N. Y. 520, 89 N. E. 1108; Doyle v. Troy, 138 App. Div. 650, 122 N. Y Supp. 704, affirmed without opinion, 202 N. Y. 625, 96 N. E. 1114; Matter of Ives, 155 App. Div. 670, 140 N. Y. Supp. 694; People v. Roosevelt, 12 Misc. 622, 34 N. Y. Supp. 228, 68 N. Y. St. Rep. 85, affirmed 14 Misc. 531, 35 N. Y. Supp. 1085, 70 N. Y. St. Rep. 703, affirmed 149 N. Y. 574, 43 N. E. 989; People v. Myers, 25 Abb. N. Cas. 368, 11 N. Y. Supp. 217;

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have not received a technical or peculiar significance from long habitual construction, are to be interpreted according to the meaning with which they were generally accepted at the time of the enactment.[21] In the framing of laws intended for the people, the legislature should attempt to give them a meaning which will not be misunderstood by the main body of the citizens,[22] and the lawmakers, therefore, are presumed to have used words as they are commonly or ordinarily employed, unless there is something in the context or purpose of the act which shows an intention to use them in a different sense.[23] Thus, the terms "forcibly" or "fraudulently" will usually be construed to import actual, as distinguished from constructive, force or fraud.[24] And when a statute prohibits the exhumation of a body for the purpose of dissection, the word "dissection" is to be understood as bearing its ordinary meaning.[25] The power to "regulate" is not ordinarily to be interpreted as the power to prohibit.[26] And the

Croswell v. Crane, 7 Barb. 191; De Camp v. Eveland, 19 Barb. 81; Clark v. Utica, 18 Barb. 451; Bridgewater, etc., Plank Road Co. v. Robbins, 22 Barb. 662; Bell v. Yates, 33 Barb. 627; Perkins v. Perkins, 44 Barb. 134; People v. Eddy, 57 Barb. 593; Chisholm v. Northern Transp. Co., 61 Barb. 363; Skinner v. Tibbitts, 13 Civ. Pro. 370; Shepard v. People, 23 How. Pr. 337; Smith v. Ferris, 6 Hun 553; Dibble v. Hathaway, 11 Hun 571; Burkitt v. Harper, 14 Hun 581, affirmed, 79 N. Y. 273; Dean v. De Wolf, 16 Hun 186; People v. Hoe, 20 Hun 26; Rhodes v. Brandt, 21 Hun 11; Hill v. Hartford Accident Ins. Co., 22 Hun 187; Fisk v. Spring, 25 Hun 367; People v. Cothran, 27 Hun 344; People v. Noelke, 29 Hun 461; Roach v. O'Dell, 33 Hun 320, affirmed 99 N. Y. 635, 1 N. E. 408; Ryan v. Hook, 34 Hun 185; In re Thirty-fourth St. R. Co., 37 Hun 442; In re New York Cable R. Co., 40 Hun 1; In re Breslin, 45 Hun 210, 10 N. Y. St. Rep. 80, appeal dismissed, 107 N. Y. 607; Matter of Manning, 71 Hun 236, 24 N. Y. Supp. 1039; Griffen v. House, 18 Johns. 397; Pardee v. Blanchard, 19 Johns. 442; Seaving v. Brinkerhoff, 5 Johns. Ch. 329; Lucas v. Ensign, 4 N. Y. Leg. Obs. 142; People v. Kelly, 7 Robt. 592; Rogers v. Buffalo, 51 Hun 637, 3 N. Y. Supp. 674, affirmed, 123 N. Y. 173, 25 N. E. 274; People v. Buffalo, 57 Hun 577, 11 N. Y. Supp. 314, 33 N. Y. St. Rep. 323; Matter of Nichols, 91 Hun 134, 36 N. Y. Supp. 538, 71 N. Y. St. Rep. 634; In re Fitzgerald, 21 Misc. 226, 45 N. Y. Supp. 630; Matter of Birdsall, 22 Misc. 180, 49 N. Y. Supp. 450; Wilson v. Tennent, 32 Misc. 273, 65 N. Y. Supp. 852; People v. Gilon, 66 App. Div. 25, 72 N. Y. Supp. 1041; In re Stebbins, 52 Misc. 438, 103 N. Y. Supp. 565; People v. Weinstock, 140 N. Y. Supp. 453.

21. James v. Patten, 6 N. Y. 9, 55 Am. Dec. 376.

22. Lautman v. New York, 157 App. Div. 219, 141 N. Y. Supp. 1042; People v. Roosevelt, 12 Misc. 622, 34 N. Y. Supp. 228, 68 N. Y. St. Rep. 85, affirmed 14 Misc. 531, 35 N. Y. Supp. 1085, 70 N. Y. St. Rep. 703, affirmed, 149 N. Y. 574, 43 N. E. 989; Smith v. New York, 1 Hun 56; In re New York Cable R. Co., 40 Hun 1. "A constitution is an instrument of government, made and adopted by the people for practical purposes, connected with the common business and wants of human life. For this reason pre-eminently, every word should be expounded in its plain, obvious and common sense." People v. New York Cent. R. Co., 24 N. Y. 485.

23. Lee v. Dill, 39 Barb. 516, 16 Abb. Pr. 92, affirmed 41 N. Y. 619; People v. Goodwin, 50 Barb. 562.

24. Bridgewater, etc., Plank Road Co. v. Robbins, 22 Barb. 662.

25. Rhodes v. Brandt, 21 Hun 1.

26. Peace v. McAdoo, 110 App. Div. 13, 96 N. Y. Supp. 1039.

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officers of a corporation are not generally to be considered as within the term "servants," though technically they might be so considered.[27] The real purpose of construction, however, is the intent of the legislature;[28] and to carry out such intent words are frequently given an enlarged or restricted meaning.[29] Words which are plain enough in their ordinary sense will not be given their ordinary meaning when such meaning involves an absurdity or inconsistency, or when it is repugnant to the clear intention of the legislature collected from the legitimate sources of interpretation.[30]

§ 124. Words of technical or special meaning.— In the absence of anything to indicate a contrary legislative intent, words of technical or special meaning in a statute are to receive such meaning.[31] Thus, words having a precise and well settled legal meaning in the jurisprudence of the state are to be understood in such sense when used in statutes, unless a different meaning is plainly indicated.[32] So, when a word having an established meaning at common law is used in a statute, the common law meaning is generally followed.[33] When legislating with reference to courts and legal proceedings, the legislature is deemed to have used the legal terms in their legal significance.[34] For example, the term "proof" will be construed as referring to *legal* evidence.[35] And, in a practice act, the word "party" will generally be construed as meaning a party to an action.[36] The phrase "next of kin" is one of well known legal signification; and, where there is nothing in the statute from which it can be

27. Dean v. De Wolf, 16 Hun 186.
28. See supra, § 52.
29. See supra, § 62, as to a departure from a literal meaning.
30. Weir v. Barker, 104 App. Div. 112, 93 N. Y. Supp. 732.
31. Hirschbach v. Ketcham, 5 App. Div. 324, 39 N. Y. Supp. 291; People v. Lane, 132 App. Div. 406, 116 N. Y. Supp. 990, affirmed without opinion 196 N. Y. 520, 89 N. E. 1108; Clark v. Utica, 18 Barb. 451; Bell v. Yates, 33 Barb. 627; Chamberlain v. Western Transp. Co., 45 Barb. 218; Gifford v. Livingston, 2 Denio 380; People v. Liscomb, 3 Hun 760; Strobridge v. Strobridge, 21 Hun 288; Fargo v. Helmer, 43 Hun 17, 6 N. Y. St. Rep. 584; People v. Platt, 50 Hun 454, 3 N. Y. Supp. 367; Howe's Cave Lime, etc., Co. v. Howe's Cave Assoc., 88 Hun 554, 34 N. Y. Supp. 848, affirmed on opinion below, 147 N. Y. 721, 42 N. E. 723.
32. People v. Fleming, 2 N. Y. 484; Perkins v. Smith, 116 N. Y. 441, 23 N. E. 21; Matter of Ehrsam, 37 App. Div. 272, 55 N. Y. Supp. 942; Matter of Wolfe, 89 App Div. 349, 85 N. Y. Supp. 949; Loewy v. Gordon, 129 App. Div. 459, 114 N. Y. Supp. 211; New York v. Holzderber, 44 Misc. 509, 90 N. Y. Supp. 63; People v. Liscomb, 3 Hun 760; Miller v. Miller, 18 Hun 507; Callahan v. O'Brien, 72 Hun 216, 25 N. Y. Supp. 410.
33. Buffalo, etc., R. Co. v. Reynolds, 6 How. Pr. 96; Rawlins v. Vidvard, 34 Hun 205.
34. People v. Liscomb, 3 Hun 760.
35. Brown v. Hinchman, 9 Johns. 75.
36. People v. McClellan, 119 App. Div. 416, 104 N. Y. Supp. 447.

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inferred that it was intended to have any other than its appropriate meaning, it should not be so far extended by construction as to include persons claiming to be legatees who are not at the same time next of kin of a testator.[37] The term "real estate" has a precise and well-settled meaning in the jurisprudence of this state, and the interest of a tenant of realty under a lease for years is not real estate, but a chattel real.[38] And, when terms of art or peculiar phrases are used, it is supposed that the legislature had in view the subject matter about which such terms or phrases are commonly employed.[39] The intent of the legislature, however, is the controlling consideration in the construction of statutes; and, when necessary to effectuate such intent, the courts may construe words of technical meaning according to their popular sense.[40]

§ 125. Lexicographical meaning.— The frequency with which judges resort to dictionaries and similar reference books indicates that they are of use in expounding the meaning of words and phrases. And the courts admit that the definitions of lexicographers may be useful as guide posts in determining the sense with which a word was used.[41] So, the fact that none gives to a word the meaning sought for it, may be considered as precluding the desired construction.[42] But the lexicographical definitions of words are not controlling, for other circumstances intervene which affect the weight of such definitions.[43] The words of a statute are not construed singly, but each is construed in connection with the other words of the context,[44] and even with other statutes *in pari materia*,[45] as well as with the circumstances surrounding the enactment of the statute.[46] The cause for the passage of the act,[47] and the evil to be remedied,[48] are highly important in the

37. Booth v. Kitchen, 7 Hun 255.
38. Matter of Ehrsam, 37 App. Div. 272, 55 N. Y. Supp. 942.
39. Chamberlain v. Western Transp. Co., 45 Barb. 218.
40. People v. Tighe, 5 Hun 25; People v. State Racing Commission, 103 N. Y. Supp. 955.
41. Caddy v. Interborough Rapid Transit Co., 195 N. Y. 415, 88 N. E. 747, 30 L. R. A. (N. S.) 30; Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 14.
42. Ramaley v. Leland, 43 N. Y. 539, 3 Am. Rep. 728; Ford v. Johnson, 34 Barb. 364.
43. People v. Fields, 58 N. Y. 491; People v. Eastman, 188 N. Y. 478, 81 N. E. 459, 11 Ann. Cas. 302; Colyer v. Richard K. Fox Pub. Co., 162 App. Div. 297, 146 N. Y. Supp. 999; People v. Buffalo, 57 Hun 577, 11 N. Y. Supp. 314, 33 N. Y. St. Rep. 323. "Webster, however, is not a very fit authority by which to test the force of the word in a statute concerning pleading." Utica v. Richardson, 6 Hill 300.
44. See supra, § 59.
45. See supra, § 67.
46. See supra, § 95.
47. See supra, § 57.
48. See supra, § 56.

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construction of statutes, and may give a word a different meaning from that which its etymological definition would justify.

§ 126. Words of more than one meaning.— One of the difficulties in the interpretation of statutes is that the English language permits a single word to have two or more significations. As stated above, the popular meaning is the one which is usually adopted,[49] though in the case of a word with an established technical or special meaning, it is presumed that the legislature had such meaning in mind when it enacted the statute in question.[50] Which of two different meanings is to be given a statute, must be determined from the context, the purpose and spirit of the act, the surrounding circumstances, and — above all — the intention of the lawmakers.[51] Difficulty is sometimes experienced in determining whether words shall be construed as terms of exclusion or inclusion. For example, the word "to" is primarily a word of exclusion, but when used as authorizing the construction of a turnpike from one city "to" another, it will be construed as allowing the construction of the road to the compact part of the city, not merely to the boundary.[52] Likewise, "until" is generally a word of exclusion, but it is sometimes used as "until and including."[53] And "two" is sometimes construed as "two or more."[54]

§ 127. Similar meaning for similar words.— Where the same word or group of words is used in different parts of the same statute, there is a presumption that the legislature intended to convey the same conception each time; and, in the absence of anything indicating a contrary intention, the same meaning will be attached to the similar expressions.[55] Although the statute may be one which, like the Code of Civil Procedure, is composed

49. § 123.

50. § 124.

51. Mangam v. Brooklyn, 98 N. Y. 585, 50 Am. Rep. 705; People v. Langan, 196 N. Y. 260, 89 N. E. 921, 17 Ann. Cas. 1081, 25 L. R. A. (N. S.) 479; Jerome Park Co. v. Board of Police, 11 Abb. N. Cas. 342; Smith v. Helmer, 7 Barb. 416; People v. Schoonmaker, 63 Barb. 44; Lucas v. Ensign, 4 N. Y. Leg. Obs. 142; People v. Buffalo, 57 Hun 577, 11 N. Y. Supp. 314, 33 N. Y. St. Rep. 323. "The spirit of a law may be referred to in order to interpret words admitting of two meanings, but not to extend a law to a case not within its fair meaning." Beebe v. Griffing, 14 N. Y. 235.

52. Farmers' Turnpike v. Coventry, 10 Johns. 389.

53. People v. Fitzgerald, 180 N. Y. 269, 73 N. E. 55.

54. People v. Rice, 29 Abb. N. Cas. 233.

55. People v. Gates, 56 N. Y. 387; Mangam v. Brooklyn, 98 N. Y. 585, 50 Am. Rep. 705; People v. Waring, 5 App. Div. 311, 39 N. Y. Supp. 193; People v. McDonough, 76 App. Div. 257, 78 N. Y. Supp. 462; Matter of McKeon, 26 Misc. 464, 58 N. Y. Supp.

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of many sections, nevertheless the rule may be applied.[56] Even though the words occur in different statutes, if the acts are similar in intent and character, the same meaning may be attached to the words.[57] The presumption of similar meaning which attaches to the use of similar words, however, is one which may be rebutted by the surrounding circumstances and other indications of legislative intent. It is rather in the nature of an aid to interpretation than a controlling rule in the construction of statutes.[58] If it is necessary for the preservation of the intent of the lawmakers to give different constructions to the terms, the courts will do so.[59] In fact, the rule as usually applied is that when the meaning of the words as used in one connection is ambiguous, but is clear in another, in such a case the ambiguous language is given the same meaning as is accorded the unambiguous words. If the meaning in both cases is clear and unambiguous, though a different interpretation is placed on the similar expressions, they will be permitted to receive such different meanings.[60] When, on the other hand, the legislature uses unlike terms in different parts of a statute, it is reasonable to infer that a dissimilar meaning is intended.[61] But this rule of course is subject to the qualification that a different legislative intent will require a different construction; and, when it appears that the legislature intended the same meaning to attach to both phrases, the use of different expressions will not warrant the court in attaching different meanings.[62]

§ 128. Inferior and superior words.— It is a general rule of construction that in legislative enumeration a term of inferior rank does not include a superior.[63] Any other holding would result in judicial legislation.[64] Especially is this true where words are used distinguishing one class or rank from another. In such a case the higher rank is not to be comprehended by words

589; Davis v. Sturtevant, 4 Duer 148; Werner v. Rochester, 77 Hun 33, 28 N. Y. Supp. 226.

56. Mestrum v. Cranides, 90 Misc. 610, 153 N. Y. Supp. 677. "We are to presume that the Code makers and the legislature, in using the same words in different parts of the Code, meant the same thing." Howell v. Mills, 53 N. Y. 322.

57. Brackett v. Harvey, 25 Hun 502.

58. People v. Waring, 5 App. Div. 311, 39 N. Y. Supp. 193.

59. Matter of Wallace, 36 Misc. 1, 72 N. Y. Supp. 445; Werner v. Rochester, 77 Hun 33, 28 N. Y. Supp. 226; Becker v. McCrea, 119 App. Div. 56, 103 N. Y. Supp. 963.

60. People v. Waring, 5 App. Div. 311, 39 N. Y. Supp. 193.

61. Chamberlain v. Western Transp Co., 45 Barb. 218.

62. Rau v. People, 63 N. Y. 277.

63. Wakefield v. Fargo, 90 N. Y 213.

64. As to the avoidance of judicial legislation, see supra, § 90.

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describing the lower, even though it might be otherwise if only general language had been employed without distinguishing one rank from another.[65] It is also a rule of interpretation that a term of greater comprehension includes a lesser term.[66] The axiom that the whole includes all of its parts is properly applied in the construction of statutes. Thus, a provision in a statute referring to more than one object is generally construed as including one of those objects.[67] If it is a crime to deface a certain notice, it is likewise a crime to take away the entire notice.[68]

§ 129. General and particular expressions.— It is a well established principle in the construction of statutes that, whenever there is a general and a particular enactment in the same statute, the general does not overrule the particular but applies only where the particular enactment is inapplicable.[69] In other words, where a general intention is expressed in an act and the act also expresses a particular intention incompatible with the broad intention, the particular is considered in the nature of an exception and is not enlarged or altered by the general intention.[70] So far as the particular intention is applicable, the general intention yields.[71] General statutes, in the absence of contrary intention, do not overreach particular prohibitions founded on special reasons of policy or convenience.[72] This doctrine is analogous to the principle that a general law will not usually repeal by implication a special law.[73] It is also a general rule of interpretation that, when general words follow particular words, the former are limited to the class of those specifically

65. Matter of McGuire, 50 Hun 203, 2 N. Y. Supp. 760, 19 N. Y. St. Rep. 431.

66. Jerome v. Ross, 7 Johns. Ch. 315, 11 Am. Dec. 484.

67. Jerome v. Ross, 7 Johns. Ch. 315, 11 Am. Dec. 484.

68. Murphy v. Tripp, 44 Barb. 189.

69. People v. Gilon, 126 N. Y. 147, 27 N. E. 282; Hoey v. Gilroy, 129 N. Y. 132, 29 N. E. 85; People v. Columbia County, 105 App. Div. 319, 93 N. Y. Supp. 1093; Humphrey v. Sweeting, 92 Hun 447, 36 N. Y. Supp. 967; Weltman v. Posenecker, 26 Civ. Pro. 238, 19 Misc. 592, 44 N. Y. Supp 406.

70. People v. Potter, 47 N. Y. 375; Wormser v. Brown, 149 N. Y. 163, 43 N. E. 524; Hoey v. Gilroy, 129 N. Y. 132, 29 N. E. 85; People v. Warden, 216 N. Y. 154, 110 N. E. 451; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; Weltman v. Posenecker, 19 Misc. 592, 44 N. Y. Supp. 406, 26 Civ. Pro. 238, 78 N. Y. St. Rep. 406; Van Loon v. Lyon, 4 Daly 149, reversed 61 N. Y. 22; People v. Krank, 46 Hun 632, 12 N. Y. St. Rep. 845; People v. Industrial Ben. Assoc., 92 Hun 311, 36 N. Y. Supp. 963; People v. Edson, 52 Super. Ct. 53; Topham v. Interurban St. Ry. Co., 96 App. Div. 323, 89 N. Y. Supp. 301.

71. Knowlton v. Providence, etc., Steamship Co., 53 N. Y. 76; People v. Columbia County, 105 App. Div. 319, 93 N. Y. Supp. 1093; Samodwitz v. Karpf, 80 App. Div. 496, 80 N. Y Supp. 704.

72. White v. Wager, 25 N. Y. 328.

73. See infra, § 175.

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mentioned.[74] This rule is usually spoken of as the doctrine of *noscitur a sociis* or *ejusdem generis.*[75] When a person is directly designated in a statute, he is not ordinarily considered as included in a more general category.[76]

§ 130. Expressio unius est exclusio alterius.—It is a universal principle in the interpretation of statutes that the specific mention of one person or thing implies the exclusion of other persons or things.[77] Thus, where a statute creates a proviso as to a certain matter, such creation is generally construed as exclusive of others not referred to.[78] And, unless it indicates a different intent, a statute naming several classes of persons to be benefited thereby, will not be construed to benefit others.[79] So, too, where a statute which grants a certain power expressly states the time when such authority shall begin to be exercised, any other time is excluded.[80] In the same way, if a saving clause declares that an act shall not affect a proceeding commenced before a certain date, impliedly it affects proceedings commenced after that date.[81] Similarly, an express repeal of a particular clause of an act does not repeal the entire act, but in legal construction confirms the remaining clauses.[82] Likewise, when a statute creates a new right and specifies the remedy for the enforcement of

74. Wakefield v. Fargo, 90 N. Y. 213; People v. Richards, 108 N. Y. 137, 15 N. E. 371, 2 A. S. R. 373; Burks v. Bosso, 180 N. Y. 341, 73 N. E. 58, 105 A. S. R. 762; People v. Kaye, 212 N. Y. 407, 106 N. E. 122; Lantry v. Mede, 127 App. Div. 557, 111 N. Y. Supp. 833; Dollard v. Koronsky, 67 Misc. 90, 121 N. Y. Supp. 987, affirmed 138 App. Div. 213, 123 N. Y. Supp. 11; Matter of Clyne, 72 Misc. 593, 131 N. Y. Supp. 1090; Donahue v. Keeshan, 91 App. Div. 602, 87 N. Y. Supp. 144.

75. See infra, § 131.

76. Dooley's Case, 8 Abb. Pr. 188.

77. In re Bonnaffe, 23 N. Y. 169; Wallace v. Swinton, 64 N. Y. 188; Pratt v. Short, 79 N. Y. 437, 35 Am. Rep. 531; People v. Angle, 109 N. Y. 564, 17 N. E. 413; New York Cent., etc., R. Co. v. Reusens, 151 App. Div. 458, 135 N. Y. Supp. 919; Matter of Engel, 155 App. Div. 467, 140 N. Y. Supp. 286; Matter of Aylesworth, 170 App. Div. 34, 155 N. Y. Supp. 916; Keavey v. De Rago, 20 Misc. 105, 45 N. Y. Supp. 77; People v. Draper, 67 Misc. 460, 124 N. Y. Supp. 758, affirmed 142 App. Div. 102, 127 N. Y. Supp. 14; Koehl v. Koehl, 92 Misc. 579, 156 N. Y. Supp. 234; Seeley v. Garrison, 10 Abb. Pr. 460; Shaler, etc., Co. v. Brewster, 10 Abb. Pr. 464; People v. Tieman, 30 Barb. 193; People v. Pease, 30 Barb. 588; Kelso v. Tabor, 52 Barb. 125; Roosevelt v. Godard, 52 Barb. 533; Chisholm v. Northern Transp. Co., 61 Barb. 363; Jackson v. Hammond, 2 Caines Cas. 336; Van Valkenburgh v. Torrey, 7 Cow. 252; Rich v. Husson, 1 Duer 617, 11 N. Y. Leg. Obs. 119; Hall v. Samson, 19 How. Pr. 481; Perkins v. Perkins, 7 Lans. 19; People v. Dolan, 1 Trans. App. 118, 36 N. Y. 59.

78. In re New York Cable R. Co., 40 Hun 1.

79. Green v. Hudson River R. Co., 32 Barb. 25.

80. Childs v. Smith, 55 Barb. 45.

81. Lennon v. New York, 55 N. Y. 361.

82. People v. Barker, 2 Wheel. Crim. 19.

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such right, the remedy is generally exclusive.[83] The fact that by statute certain public officers hold their offices until their successors are chosen tends to indicate that other officers do not so hold.[84] The inference that an omitted thing was intended to be excluded may be fortified by the history of the act; if, for example, a prior act refers to two things and upon re-enactment but one is included, the inference is irresistible that the legislature intended to exclude the omitted thing.[85] And it is said that the maxim is especially applicable to the clause of a statute defining the powers of a new office created by the statute itself.[86] The inference that omitted particulars were intended to be excluded is stronger in a carefully drafted statute than in a carelessly drawn act.[87] This maxim is not an iron bound rule of law excluding in all cases from the operation of a statute those things which are not enumerated therein. It is merely an aid to be utilized in ascertaining the meaning of a statute when its language is ambiguous. If the language indicates that other things than those mentioned are intended to be included within its operation, the maxim will not necessarily require their exclusion.[88]

§ 131. Noscitur a sociis and ejusdem generis.— The maxim *noscitur a sociis,* meaning literally, "it is known from its associates," and the expression *ejusdem generis,* meaning "of the same kind," are frequently used in the interpretation of statutes. By following these expressions, the scope of a word is frequently measured by the surrounding terms. Where words of specific or inevitable purport are followed by words of general import, the application of the last phrase is generally confined to the subject matter disclosed in the phrases with which it is connected. It is known by the company it keeps; and, though capable of a wider significance if found alone, it is limited in its effect by the words to which it is an adjunct. It may strengthen the general structure, but it cannot exceed the original outline.[89] The practical

83. See supra, § 4.
84. People v. Tieman, 30 Barb. 193.
85. People v. Fire Com'rs, 23 Hun 317.
86. People v. French, 12 Hun 254.
87. Behan v. People, 17 N. Y. 516.
88. People v. Tax Com'rs, 23 N. Y. 242; Matter of Engel, 155 App. Div. 467, 140 N. Y. Supp. 286; Bowen v. Lease, 5 Hill 221.
89. Aikin v. Wasson, 24 N. Y. 482; Coffin v. Reynolds, 37 N. Y. 640; McGaffin v. Cohoes, 74 N. Y. 387, 30 Am. Rep. 307; Wakefield v. Fargo, 90 N. Y. 213; People v. Richards, 108 N. Y. 137, 15 N. E. 371, 2 A. S. R. 373; Palmer v. Van Santvoord, 153 N. Y. 612, 47 N. E. 915, 38 L. R. A. 402; People v. Eastman, 188 N. Y. 478, 81 N. E. 459, 11 Ann. Cas. 302; People v. Kaye, 212 N. Y. 407, 106 N. E. 122; People v. Hemleb, 127 App. Div. 356, 111 N. Y. Supp. 690;

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importance of the doctrine is the meaning which shall be given to the word "other" after a specific enumeration has been made in a statute. The rule may be stated as follows: Where a statute enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces "other" persons or things, the word "other" will generally be read as "other such like," so that persons or things therein comprised may be read as *ejusdem generis* with, and not of a quality superior to or different from, those specifically enumerated.[90] To illustrate, a statute relating to clerical or "other errors in the assessment or returns," refers to other errors of form, not errors of substance.[91] Likewise, in the construction of an act referring to "every building erected for the use of a college," incorporated academy, or *other* seminary of learning, it was held that "other" referred to other incorporated seminaries and did not include unincorporated seminaries.[92] Similarly, an act prohibiting "all shooting, hunting, fishing, playing, horse racing, gaming, or other public sports, exercises or shows," on Sunday, refers only to out-of-door sports, exercises or shows.[93] So, too, a section of the National Banking Act giving a national bank power by its board of directors to appoint a president, vice-president, cashier and other officers, was held not to include a person employed to solicit business, as he was not *ejusdem generis* with the officers specially mentioned.[94] The general rule, though particularly applicable when the term "other" is used, is not in all cases inapplicable when such word is absent.[95] But the absence of "other" or some similar term tends to show an independence of the various terms so that the application of the last one is not so definitely limited as when

Lantry v. Mede, 127 App. Div. 557, 111 N. Y. Supp. 833; Matter of Aylesworth, 170 App. Div. 34, 155 N. Y. Supp. 916; Matter of Clyne, 72 Misc. 593, 131 N. Y. Supp. 1090; People v. Cothran, 27 Hun 344; People v. Remington, 45 Hun 329, 10 N. Y. St. Rep. 310; Donahue v. Keeshan, 91 App. Div. 602, 87 N. Y. Supp. 144.

90. Hermance v. Ulster County, 71 N. Y. 481; Burks v. Bosso, 180 N. Y. 341, 73 N. E. 58, 105 A. S. R. 762; Philbrick v. Ignatz Florio Co-operative Assoc., 137 App. Div. 613, 122 N. Y. Supp. 341, affirmed on opinion below, 200 N. Y. 526, 93 N. E. 1123; Dollard v. Koronsky, 67 Misc. 90, 121 N. Y. Supp. 987, affirmed 138 App Div. 213, 123 N. Y. Supp. 11; Matter of Soule, 72 Hun 594, 25 N. Y. Supp. 270.

91. Hermance v. Ulster County, 71 N. Y. 481.

92. Chegary v. New York, 13 N. Y. 220; Chegaray v. Jenkins, 3 Sandf. 409, affirmed 5 N. Y. 376.

93. People v. Hemleb, 127 App Div. 356, 111 N. Y. Supp. 690. Compare Moore v. Owen, 58 Misc. 332 109 N. Y. Supp. 585.

94. Case v. Brooklyn First Nat Bank, 59 Misc. 269, 109 N. Y. Supp 1119.

95. Aikin v. Wasson, 24 N. Y. 482;

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the word "other" is used.[96] The use of the expression "any other" will give the clause a broader application than if simply the word "other" were used.[97] The doctrines mentioned in this paragraph, however, are useful only to assist in ascertaining the legislative intent when the language used is not clear; if the intent of the lawmakers is plain, the rule of *noscitur a sociis* or *ejusdem generis* must yield.[98]

VII. Construction of Particular Classes of Statutes

Penal Statutes

§ 132. General rule requires strict construction.— It is enunciated as a general rule in the interpretation of statutes that penal statutes are to receive a strict construction as against the party seeking to enforce the penalty and in favor of the one proceeded against.[1] A penalty cannot be raised in a statute by implication.

People v. Eastman, 188 N. Y. 478, 81 N. E. 459, 11 Ann. Cas. 302.

96. Caddy v. Interborough Rapid Transit Co., 195 N. Y. 415, 88 N. E. 747, 30 L. R. A. (N. S.) 30.

97. Philbrick v. Ignatz Florio Co-operative Assoc., 137 App. Div. 613, 122 N. Y. Supp. 341, affirmed on opinion below, 200 N. Y. 526, 93 N. E. 1123.

98. People v. Kaye, 160 App. Div. 644, 146 N. Y. Supp. 398, affirmed 212 N. Y. 407, 106 N. E. 122.

1. Curtis v. Leavitt, 15 N. Y. 9; Hathaway v. Johnson, 55 N. Y. 93, 14 Am. Rep. 186; Hintermister v. Chittenango First Nat. Bank, 64 N. Y. 212; Bonnell v. Griswold, 80 N. Y. 128; Whitaker v. Masterton, 106 N. Y. 277, 12 N. E. 604; Wallace v. Walsh, 125 N. Y. 26, 25 N. E. 1076, 11 L. R. A. 166; People v. Nelson, 153 N. Y. 90, 46 N. E. 1040, 60 A. S. R. 592; Manhattan Co. v. Kaldenberg, 165 N. Y. 1, 58 N. E. 790; People v. Weinstock, 193 N. Y. 481, 86 N. E. 359, 87 N. E. 518, 22 L. R. A. (N. S.) 547; Dieterich v. Fargo, 194 N. Y. 359, 87 N. E. 518, 22 L. R. A. (N. S.) 596; Jones v. Rochester Gas, etc., Co., 7 App. Div. 465, 39 N. Y. Supp. 1105; People v. Abraham, 16 App. Div. 58, 44 N. Y. Supp. 1077; Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961; People v. Timmerman, 79 App. Div. 565, 80 N. Y. Supp. 285; People v. Bootman, 95 App. Div. 469, 88 N. Y. Supp. 887, affirmed 180 N. Y. 1, 72 N. E. 505, 2 Ann. Cas. 226; Hoboken Beef Co. v. Hand, 104 App. Div. 390, 93 N. Y. Supp. 834; People v. Sturgis, 121 App. Div. 407, 106 N. Y. Supp. 61; People v. Abramson, 137 App. Div. 549, 122 N. Y. Supp. 115; People v. City Prison, 144 App. Div. 24, 128 N. Y. Supp. 837, affirmed without opinion, 212 N. Y. 612, 106 N. E. 1039; Elmira v. Johnson, 151 App. Div. 728, 136 N. Y. Supp. 471; Rose v. New York Tel. Co., 167 App. Div. 691, 152 N. Y. Supp. 827; Farnum v. Harrison, 167 App. Div. 704, 152 N. Y. Supp. 835; Buckley v. Harrison, 10 Misc. 683, 1 N. Y. Ann. Cas. 335, 31 N. Y. Supp. 999, 65 N. Y. St. Rep. 93; New York v. Bigelow, 13 Misc. 42, 34 N. Y. Supp. 92, 68 N. Y. St. Rep. 163; People v. Wright, 19 Misc. 135, 43 N. Y. Supp. 290; Hearn v. Western Union Tel. Co., 36 Misc. 557, 73 N. Y. Supp. 1077; Tuscarora Nation of Indians v. Williams, 79 Misc. 445, 141 N. Y. Supp. 207; Beach v. Bay State Co., 10 Abb. Pr. 71, 30 Barb. 433; Hasbrook v. Paddock, 1 Barb. 635; Seward v. Beach, 29 Barb. 239; Bennett v. Ward, 3 Caines 259; People v. Masonic Guild, etc., Assoc., 22 Civ. Pro. 74, 18 N. Y. Supp. 806; Sprague v. Birdsall, 2 Cow. 419; Van Valkenburgh v. Torrey, 7 Cow. 252; Watervliet Turnpike Co. v. McKean, 6 Hill 616; People v. Berberrich, 11 How. Pr. 289; Dibble v. Hathaway, 11 Hun 571; Torbett v. Godwin, 62 Hun 407, 17 N

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but must be expressly created and imposed.[2] The law does not favor constructive offenses or arbitrary punishments and no one should be held to have incurred a penalty, unless the act committed by him is clearly within both the spirit and letter of the statute.[3] If there is a reasonable doubt whether a penal statute applies to a particular case, the party of whom the penalty is claimed shall have the benefit of it.[4] In much the same way, if it is doubtful whether a crime is a felony or a misdemeanor, the courts incline toward the view that it is merely a misdemeanor.[5] A statute which makes a crime that which was not recognized at common law as a criminal offense, is particularly restrained in its application to cases clearly within its meaning and language.[6]

Y. Supp. 46; Jackson v. Catlin, 2 Johns. 248; Beadleston v. Sprague, 6 Johns. 101; Caswell v. Allen, 7 Johns. 63; Bell v. Dole, 11 Johns. 173; Cuyler v. Rust, 12 Johns. 372; Foster v. Rhoads, 19 Johns. 191; Fish v. Fisher, 2 Johns. Cas. 89; New York Assoc. of Game v. Durham, 51 Super. Ct. 306; American Life Ins., etc., Co. v. Bayard, 5 N. Y. Leg. Obs. 13; New York v. Compton, 32 Misc. 205, 65 N. Y. Supp. 686; Wilson v. Tennent, 32 Misc. 273, 65 N. Y. Supp. 852; Imperato v. Wasboe, 47 Misc. 150, 93 N. Y. Supp. 489; Lovejoy v. Weil, 48 Misc. 611, 95 N. Y. Supp. 552; United States Condensed Milk Co. v. Smith, 116 App. Div. 15, 101 N. Y. Supp. 129; Catalano v. Crosstown St. R. Co., 137 N. Y. Supp. 118; Elliot v. Cronk, 13 Wend. 35.

2. Lowenberg v. People, 27 N. Y. 336; Verona Cent. Cheese Co. v. Murtaugh, 50 N. Y. 314; Health Department v. Knoll, 70 N. Y. 530; Bonnell v. Griswold, 80 N. Y. 128; Van Dyke v. McQuade, 86 N. Y. 38; Whitaker v. Masterton, 106 N. Y. 277, 12 N. E. 604; People v. Phyfe, 136 N. Y. 554, 32 N. E. 978, 19 L. R. A. 141; Manhattan Co. v. Kaldenberg, 165 N. Y. 1, 58 N. E. 790; People v. Briggs, 193 N. Y. 457, 86 N. E. 522; Dieterich v. Fargo, 194 N. Y. 359, 87 N. E. 518, 22 L. R. A. (N. S.) 696; People v. Abraham, 16 App. Div. 58, 44 N. Y. Supp. 1077; People v. Hemleb, 127 App. Div. 356, 111 N. Y. Supp. 690; Johnson v. Auburn, etc., Electric R. Co., 169 App. Div. 864, 156 N. Y. Supp. 93; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74; Health Department v. Owen, 42 Misc. 221, 85 N. Y. Supp. 397, affirmed, 94 App. Div. 425, 88 N. Y. Supp. 184; Meyers v. Western Union Tel. Co., 82 Misc. 266, 143 N. Y. Supp. 574; McComb v. Belknap, 30 Abb. N. Cas. 119, 24 N. Y. Supp. 935; Curtis v. Leavitt, 17 Barb. 309; Bridgewater, etc., Plank Road Co. v. Robbins, 22 Barb. 662; Ramsey v. Gould, 57 Barb. 398; Strong v. Stebbins, 5 Cow. 210; Myers v. Foster, 6 Cow. 567; Fire Department v. Braender, 14 Daly 53; New York v. Walker, 4 E. D. Smith 258; Cameron v. Seaman, 7 Hun 601; Jones v. Estis, 2 Johns. 379; Port of New York v. Cartwright, 4 Sandf. 236; People v. Weinstock, 140 N. Y. Supp. 453; People v. Draper, 169 App. Div. 479, 154 N. Y. Supp. 1034. "The courts have uniformly refused to extend a penal act beyond the strict letter of the statute, in order to bring a case within its meaning which was not clearly embraced in its letter." Wallace v. Walsh, 125 N. Y. 26, 25 N. E. 1076, 11 L. R. A. 166.

3. Verona Cent. Cheese Co. v Murtaugh, 50 N. Y. 314; Burks v. Bosso, 180 N. Y. 341, 73 N. E. 58, 105 A. S. R. 762; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74.

4. Chase v. New York Cent. R. Co., 26 N. Y. 523; McCarthy v. International R. Co., 126 App. Div. 182, 110 N. Y. Supp. 936; People v. Hemleb, 127 App. Div. 356, 111 N. Y. Supp. 690; People v. Allen, 20 Misc. 120, 45 N. Y. Supp. 74; People v. Featherly, 59 Hun 615 mem., 12 N. Y. Supp. 389, 35 N. Y. St. Rep. 156, appeal dismissed, 131 N. Y. 597, 30 N. E. 48, 42 N. Y. St. Rep. 878.

5. People v. Knatt, 156 N. Y. 302, 50 N. E. 835.

6. People v. Phyfe, 136 N. Y. 554,

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Acts not likely to strike the ordinary mind as morally wrong, if made misdemeanors by positive law, or intended so to be, should be clearly described and as clearly forbidden; otherwise the statute becomes a mere trap to catch the unwary.[7] The courts of this state are so averse to penalties and forfeitures that they will not, as a general rule, enforce those created by the laws of another state.[8]

§ 133. Limitations on rule.— The rule of a strict construction for penal laws is not permitted to override the doctrine that the intent of the legislature is the primary object of all statutory construction.[9] A penal statute must not be construed so strictly as to result in a perversion of the legislative intent.[10] The doctrine that a penal statute shall receive a strict construction is not applied so as to narrow the words of a statute to the exclusion of cases which the words, in their ordinary significance or in that sense in which the legislature obviously used them, would comprehend.[11] Whether a statute is penal or remedial, it receives a fair and reasonable construction so as to carry into effect the intention of the makers apparent from the language used.[12] Even in the construction of a criminal statute relative to a felony, the courts regard the intent of the lawmakers.[13] The same general canons of interpretation are applicable to penal statutes as are useful in the construction of other classes of statutes.[14]

§ 134. What statutes are penal.— Strictly speaking, penal laws are those imposing punishment for an offense committed against the state.[15] Thus, statutes which make the commission of an act a felony or misdemeanor are always classified as penal acts.[16]

32 N. E. 978, 19 L. R. A. 141; William Fox Amusement Co. v. McClellan, 62 Misc. 100, 114 N. Y. Supp. 594; Carpenter v. People, 8 Barb. 603.

7. Burks v. Bosso, 180 N. Y. 341, 73 N. E. 58, 105 A. S. R. 762; Curtis v. Leavitt, 17 Barb. 309.

8. Langdon v. New York, etc., R. Co., 9 N. Y. Supp. 245, 29 N. Y. St. Rep. 656.

9. Verona Cent. Cheese Co. v. Murtaugh, 50 N. Y. 314; Bridgewater, etc., Plank Road Co. v. Robbins, 22 Barb. 662; Dibble v. Hathaway, 11 Hun 571.

10. Cotheal v. Brouwer, 5 N. Y. 562; People v. Wright, 19 Misc. 135. 43 N. Y. Supp. 290; Prentice v. Whitney, 8 Hun 300.

11. Cotheal v. Brouwer, 5 N. Y. 562.

12. Fisher v. New York Cent., etc., R. Co., 46 N. Y. 644; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153; People v. Abramson, 137 App. Div. 549, 122 N. Y. Supp. 115.

13. Sickles v. Sharp, 13 Johns. 497.

14. Cameron v. Seaman, 7 Hun 601.

15. People v. Wells, 52 App. Div. 583, 65 N. Y. Supp. 319.

16. Health Department v. Owen, 42

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But acts which allow a penalty or forfeiture to a person for a violation of the rights of such persons are considered penal laws within the meaning of the rule giving penal statutes a strict construction. Thus, acts imposing liability on the directors of corporations for the debts of the corporations in certain cases are deemed penal statutes.[17] And section 103 of the Transportation Corporations Law, providing a penalty for the neglect or refusal of a telegraph or telephone company to perform its statutory duty with reference to the transmission of telegrams, is strictly construed.[18] The provisions of the Civil Rights Law fixing a penalty for the failure to accommodate negroes is highly penal and is not extended by implication.[19] So too, statutes relative to usury have been thought to be penal in their nature.[20] And statutes authorizing arrest and imprisonment for debt, though remedial to the extent that they are designed to coerce payment, are regarded as penal.[21] But a statute which gives a person a new right and allows him compensatory damages for its violation is not generally regarded as a penal law. For example, the Civil Damage Act of 1873 was not construed as a penal law, but simply as a statute creating a cause of action unknown to the common law.[22]

§ 135. Intent as an implied element of criminal offense.— It is reasonable to assume that it is the design of the legislature to punish as criminal offenses only those acts which are intentionally committed.[23] Hence, if it is practicable to avoid a construction of a statute which eliminates intent as an element of a crime, the courts will do so.[24] Of course, if the legislature indicates that it means to punish acts, regardless of the intent with which they are committed, the courts must submit, for they cannot insert the element of intent into a criminal statute when the legislature has enacted otherwise.

Misc. 221, 85 N. Y. Supp. 397; Imperato v. Washoe, 47 Misc. 150, 93 N. Y. Supp. 489.

17. As to the construction of acts imposing liability on directors of corporations, see infra, § 143.

18. Rose v. New York Tel. Co., 167 App. Div. 691, 152 N. Y. Supp. 827; Meyers v. Western Union Tel. Co., 82 Misc. 266, 143 N. Y. Supp. 574.

19. Johnson v. Auburn, etc., Electric R. Co., 169 App. Div. 864, 156 N. Y. Supp. 93.

20. Curtis v. Leavitt, 15 N. Y. 9.

21. Hathaway v. Johnson, 55 N. Y. 93, 14 Am. Rep. 186.

22. Quinlan v. Welch, 141 N. Y. 158, 36 N. E. 12. But see Campbell v. Schlesinger, 48 Hun 428, 1 N. Y. Supp. 220.

23. Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961. See also People v. Fanshawe, 65 Hun 77, 19 N. Y. Supp. 865.

24. Martin v. Goldstein, 20 App. Div. 203, 46 N. Y. Supp. 961.

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§ 136. Penal statutes which are remedial or beneficial to public.— The distinction between penal and remedial statutes is generally obvious, but difficulty is sometimes experienced when provisions of both classes are blended in one statute. A remedial statute may prescribe a penalty for its violation.[25] A remedial statute which furnishes an additional remedy for a pre-existing right may well receive a favorable construction;[26] but a statute which creates a new right and prescribes a penalty as an aid for its enforcement, though the statute may be considered remedial in the sense that it cures a defect in the pre-existing system of law, is construed strictly.[27] Statutes which authorize arrest and imprisonment for debt, although they are remedial to the extent that they are designed to afford a remedy to the creditor to coerce payment, are also regarded as penal, and are not extended by construction so as to embrace cases not clearly within them.[28] Similarly, statutes which prescribe a penalty for the good of the public are not given the strict construction generally accorded penal laws.[29] A statute beneficial to the public, though penal as to some persons, will receive an equitable construction.[30] For example, the statute requiring signals to be given upon the approach of a locomotive to a crossing, and prescribing a penalty for its violation, does not receive a strict construction.[31] So, too, a statute designed to compel telegraph companies with extensive lines to receive from other companies messages which such other companies could transmit no further, though penal to the offender, is generally beneficial and is equitably construed.[32] And a statute giving stockholders of a corporation the right to examine its transfer books and to copy the names of the stockholders, and prescribing a penalty for a denial of the right, should be construed equitably.[33]

25. As to the construction of remedial statutes in general, see infra, § 153 et seq.

26. Caesar v. Bernard, 156 App. Div. 724, 141 N. Y. Supp. 659, affirmed on opinion below, 209 N. Y. 570, 103 N. E. 1122; People v. Berberrich, 11 How. Pr. 289.

27. Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 14; People v. Berberrich, 11 How. Pr. 289.

28. Hathaway v. Johnson, 55 N. Y. 93, 14 Am. Rep. 186.

29. People v. New York Cent. R. Co., 25 Barb. 199; People v. Bartow, 6 Cow. 290.

30. Cotheal v. Brouwer, 5 N. Y. 562; People v. Abraham, 16 App. Div. 58, 44 N. Y. Supp. 1077; United States Tel. Co. v. Western Union Tel. Co., 56 Barb. 46; People v. Bartow, 6 Cow. 290; Sickles v. Sharp, 13 Johns. 497.

31. People v. New York Cent. R. Co., 25 Barb. 199.

32. United States Tel. Co. v. Western Union Tel. Co., 56 Barb. 46.

33. Cotheal v. Brouwer, 5 N. Y. 562.

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§ 137. Statutory rule as to construction of criminal statutes. — By legislative enactment, the rule that a penal statute is to be strictly construed does not apply to the Penal Law or any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law.[34] This statute, so far as the Penal Law is concerned, has modified the rule of construction which formerly obtained with reference to criminal offenses.[35] But this statute does not authorize the court in ignoring an essential part of the statute for the purpose of promoting justice in a particular case.[36] And, in spite of the statutory rule of construction, it is only in extraordinary cases that the court is justified in extending the application of the statute beyond the plain words thereof.[37] Notwithstanding the statutory rule for the construction of penal laws, if a statute makes penal the doing of something not previously unlawful, while the language of the statute should be given a reasonable construction for the purpose of carrying into effect the purpose of the legislature, it cannot be enlarged, so as to make penal what is not plainly written in the statute itself. Words employed in such a statute should be given their ordinary and usual meaning, and should not be so construed as to make out a crime by implication.[38]

Special Privileges and Exemptions

§ 138. In general.— It is a rule of the common law that all legislative grants of privilege are to be liberally interpreted in favor of the public, and strictly interpreted against the grantee.[39] The rule probably had its origin in the desire to protect the sovereign against imposition and to preserve the royal prerogatives against grasping and insatiate courtiers. In this country the rule is particularly applicable to grants of special franchises and

34. Penal Law, § 21.

35. People v. Teal, 196 N. Y. 372, 89 N. E. 1086, 17 Ann. Cas. 1175, 25 L. R. A. (N. S.) 120; People v. Abeel, 45 Misc. 86, 91 N. Y. Supp. 699, affirmed 100 App. Div. 516, 91 N. Y. Supp. 1107, 182 N. Y. 415, 75 N. E. 307, 3 Ann. Cas. 287, 1 L. R. A. (N. S.) 730; People v. Becker, 78 Misc. 666, 138 N. Y. Supp. 771; People v. Bauer, 37 Hun 407; People v. Weinstock, 140 N. Y. Supp. 453.

36. People v. Teal, 196 N. Y. 372, 89 N. E. 1086, 17 Ann. Cas. 1175, 25 L. R. A. (N. S.) 120.

37. People v. City Prison, 144 App. Div. 24, 128 N. Y. Supp. 837, affirmed without opinion, 212 N. Y. 612, 106 N. E. 1039; People v. Toland, 165 App. Div. 795, 151 N. Y. Supp. 482; People v. Weinstock, 140 N. Y. Supp. 453.

38. People v. Cohen, 157 N. Y. Supp. 591.

39. Weed v. Tucker, 19 N. Y. 422; More v. Cooley, 2 Hill 412; People v. Cothran, 27 Hun 344.

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privileges to corporations, such grants being frequently expressed in the language of the grantees and passed upon their solicitation and primarily for their benefit.[40] A grant of public lands, though not construed so strictly as to defeat the intent of the legislature or withhold what is given either expressly or by fair implication,[41] is nevertheless not liberally construed.[42] Lands below the high-water mark of navigable waters, therefore, will not pass by a patent from the sovereign power, unless actually included in the expressed metes and bounds of the grant.[43] So, too, a statute which confers special privileges upon a certain class of laborers within the state, such as a statute regulating the wages of day laborers employed on public works, is strictly construed so that it will not be extended to classes not plainly within the legislative intent.[44]

§ 139. Franchises and special grants to corporations.— It is a general rule that statutes granting special franchises or privileges to corporations are strictly construed in favor of the public.[45] If such a statute is ambiguous, it will receive that construction which is most favorable to the public.[46] Thus, it is generally held that a statute of the state granting powers and privileges to corporations must, in the absence of plain indications to the contrary, be held to apply only to corporations of the

40. New York v. Dry Dock R. Co., 47 Hun 199, 13 N. Y. St. Rep. 396.

41. Bardes v. Herman, 144 App. Div. 772, 129 N. Y. Supp. 723, affirmed on opinion below, 207 N. Y. 745, 101 N. E. 1094.

42. De Lancey v. Piepgras, 138 N. Y. 26, 33 N. E. 822.

43. DeLancey v. Piepgras, 138 N. Y. 26, 33 N. E. 822. See also Palmer v. Hicks, 6 Johns. 133.

44. Drake v. State, 144 N. Y. 414, 39 N. E. 342.

45. Auburn, etc., Plank-Road Co., v. Douglass, 9 N. Y. 444; Syracuse Water Co. v. Syracuse, 116 N. Y. 167, 22 N. E. 381, 5 L. R. A. 546; Potter v. Collis, 156 N. Y. 16, 50 N. E. 413; Brooklyn, etc., R. Co. v. Long Island R. Co., 72 App. Div. 496, 76 N. Y. Supp. 777; Palmer v. Hickory Grove Cemetery, 84 App. Div. 600, 82 N. Y. Supp. 973; New York v. Broadway, etc., R. Co., 97 N. Y. 275; Adler v. Metropolitan El. R. Co., 28 Abb. N. Cas. 198, 18 N. Y. Supp. 858, 46 N. Y. St. Rep. 253, modified and affirmed, 138 N. Y. 173, 33 N. E. 935; Benson v. New York, 10 Barb. 223; People v. Cothran, 27 Hun 344; New York v. Dry Dock R. Co., 47 Hun 199, 13 N. Y. St. Rep. 396; Gilbert v. Columbia Turnpike Co., 3 Johns. Cas. 107; Mohawk Bridge Co. v. Utica, etc., R. Co., 6 Paige 554; Matter of Utica, 73 Hun 256, 26 N. Y. Supp. 564; Beekman v. Third Ave. R. Co., 13 App. Div. 279, 43 N. Y. Supp. 174; DeGrauw v. Long Island Electric R. Co., 43 App. Div. 502, 60 N. Y. Supp. 163; Johnstown Cemetery Assoc. v. Parker, 45 App. Div. 55, 60 N. Y. Supp. 1015; Williams v. Port Chester, 72 App. Div. 505, 76 N. Y. Supp. 631.

46. People v. Broadway R. Co., 126 N. Y. 29, 26 N. E. 961; Brooklyn, etc., R. Co. v. Long Island R. Co., 72 App. Div. 496, 76 N. Y. Supp. 777; O'Reilly v. Brooklyn Heights R. Co., 95 App. Div. 253, 89 N. Y. Supp. 41; Matter of Broadway, etc., R. Co., 17 Hun 242; New York v. Dry Dock R. Co., 47 Hun 199, 13 N. Y. St. Rep. 396.

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state, and over which it has the power of visitation and control.[47] And, when the terms of the grant of a franchise do not in express terms declare that it shall be an exclusive franchise, it is not so construed, and a competing franchise may be granted to another person or corporation.[48] So, too, if a statute conferring power upon local authorities to grant public franchises and regulating the procedure for the grants is open to two constructions, that is to be preferred which safeguards the public interests and promotes purity and simplicity of administration.[49] Particularly, is a special privilege condemned when it is in derogation of common right.[50] For example, a statute authorizing the construction of a toll bridge and forbidding the crossing of the water within three miles of the bridge except across the bridge, is not extended beyond the clear import of the words used.[51] Of course, if the grant is free from ambiguity, there is no room for construction; it is only in case of doubt that the courts are called upon to apply the rules of interpretation.[52]

§ 140. Delegation of eminent domain.— The right to take lands by condemnation is a sovereign power of the people of the state. The people may reserve this right, or, in their discretion, they may delegate the power to public or quasi-public corporations. But a delegation of sovereign power is strictly construed;[53] and, hence, a statute conferring the power of eminent domain is not extended by inference or implication.[54] If it is doubtful whether condemnation is to be allowed of a fee or merely an easement, in real estate, only an easement can be taken.[55] And when the

47. In re Prime, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713; Matter of Smith, 77 Hun 134, 28 N. Y. Supp. 476; Matter of Balleis, 78 Hun 275, 29 N. Y. Supp. 261, 60 N. Y. St. Rep. 792; Matter of Taylor, 80 Hun 589, 30 N. Y. Supp. 582, 62 N. Y. St. Rep. 570. And see supra, § 64.

48. Syracuse Water Co. v. Syracuse, 116 N. Y. 167, 22 N. E. 381, 5 L. R. A. 546; Mohawk Bridge Co. v. Utica, etc., R. Co., 6 Paige 554; Thompson v. New York, etc., R. Co., 3 Sandf. Ch. 625.

49. Beekman v. Third Ave. R. Co., 153 N. Y. 144, 47 N. E. 277.

50. Auburn, etc., Plank Road Co. v. Douglass, 9 N. Y. 444; Cayuga Bridge Co. v. Magee, 6 Wend. 85. Compare Canastota, etc., Plank Road Co. v. Parkill, 50 Barb. 601. And see infra, §§ 148–152, as to the construction of acts in derogation of common right.

51. Sprague v. Birdsall, 2 Cow. 419; Cayuga Bridge Co. v. Magee, 6 Wend. 85.

52. Benson v. New York, 10 Barb. 223. And see supra, § 55, as to statutes too clear for construction.

53. Peace v. McAdoo, 110 App. Div. 13, 96 N. Y. Supp. 1039.

54. Rensselaer, etc., R. Co. v. Davis, 43 N. Y. 137; New York, etc., R. Co. v. Kip, 46 N. Y. 546, 7 Am. Rep. 385; In re Poughkeepsie Bridge Co., 108 N. Y. 483, 15 N. E. 601; Sharpe v. Speir, 4 Hill 76; New York, etc., R. Co. v. Central Union Tel. Co., 21 Hun 261.

55. Washington Cemetery v. Prospect Park, etc., R. Co., 68 N. Y. 591; In re Long Island R. Co., 189 N. Y. 428, 82 N. E. 443.

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statute authorizing the condemnation of real estate does not expressly permit the taking of lands already devoted to a public use, such lands cannot generally be taken. The power to take lands already dedicated to a public purpose must be conferred by express terms or necessary implication, and the implication does not arise if the powers expressly conferred can by reasonable intendment be exercised without such an appropriation.[56] But statutes granting the power of eminent domain are not to be construed so literally or strictly as to defeat the evident purpose of the legislature. They are to receive a reasonably strict and guarded construction, and the powers granted will extend no further than is expressly stated or is necessary to accomplish the general scope and purpose of the grant; but, if there remains a doubt as to the extent of the power after all reasonable intendments in its favor, the doubt should be solved adversely to the claim of power.[57]

§ 141. **Exemptions from taxation.**— Though, on the one hand, special taxing statutes are as a rule construed strictly against the government and in favor of the citizen,[58] on the other hand, a statute exempting certain property from general taxation is construed strictly against the property holder; and, if the exemption is not plainly expressed, it will not be presumed.[59] These two rules are not necessarily inconsistent. The strict construction of the exemption is applied in those cases where the exemption is claimed from the *general* burden of taxation, which is common upon all property or upon the people generally; and the rule for the strict construction of taxing statutes is especially applied where the tax sought to be imposed is not such a common burden but is a *special* tax reaching only to special cases and affecting

56. In re Boston, etc., R. Co., 53 N. Y. 574; In re Buffalo, 68 N. Y. 167; In re New York, etc., R. Co., 20 Hun 201.

57. New York, etc., R. Co. v. Kip, 46 N. Y. 546, 7 Am. Rep. 385.

58. See infra, § 150.

59. Buffalo City Cemetery v. Buffalo, 46 N. Y. 503; People v. Board of Tax Com'rs, etc., 76 N. Y. 64; People v. Davenport, 91 N. Y. 574; People v. Tax Com'rs, 95 N. Y. 554; People v. Coleman, 121 N. Y. 542, 25 N. E. 51; People v. Peck, 157 N. Y. 51, 51 N. E. 412; People v. Cahill, 181 N. Y. 403, 74 N. E. 422; Rochester v. Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 70 L. R. A. 773; People v. Sayles, 32 App. Div. 197, 53 N. Y. Supp. 67; People v. Lawler, 74 App. Div. 553, 77 N. Y. Supp. 840; People v. Reilly, 85 App. Div. 71, 83 N. Y. Supp. 39; Matter of Young Women's Christian Assoc., 156 App. Div. 295, 141 N. Y. Supp. 138, affirmed without opinion, 209 N. Y. 534, 102 N. E. 1118; Matter of Tremont Baptist Church, 36 Misc. 590, 73 N. Y. Supp. 1075; Rochester v. Coe, 25 App. Div. 300, 49 N. Y. Supp. 502; Matter of White, 118 App. Div. 869, 103 N. Y. Supp. 688.

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only a special class of persons.[60] Taxation is a common burden of the citizens for defraying the expenses of the government, and it is appropriate that this burden be shared generally and proportionately. Any person or class released from this burden receives a special favor at the expense of the public. For these reasons, the courts disapprove exemptions from taxation and strictly construe statutes having that end in view.[61] That the exemption is in favor of some religious or charitable corporation or other benevolent enterprise does not affect the principle. The same strict rule of construction is followed.[62] The rule of strict construction does not mean such a literal interpretation as would defeat or nullify the intention of the legislature.[63] A statute exempting a certain class from taxation, from motives of public policy, not founded upon any adequate consideration, is not a contract constitutionally protected, and is subject to repeal at the will of the legislature.[64] But, where a transfer of property in endowment of a charitable corporation is directly induced by a promise of exemption from taxation, which was acted upon, it will not be presumed that the legislature, in passing a general tax law operative in repeal of prior exemptions, intended to repeal the exemption.[65]

Acts Changing the Common Law

§ 142. Generally.— It is a general rule that a statute in derogation of the common law is strictly construed to the end that the common law system be changed only so far as the words of the statute require.[66] As a general rule, when a statute is intended to abrogate a common law right or to confer a right not vested by the common law, it will be so construed as not to go beyond the

60. Matter of Mergentime, 129 App. Div. 367, 113 N. Y. Supp. 948, affirmed on opinion below, 195 N. Y. 572, 88 N. E. 1125; Matter of Young Women's Christian Assoc., 156 App. Div. 295, 141 N. Y. Supp. 138, affirmed without opinion, 209 N. Y. 534, 102 N. E. 1118. "While water rates may not be, strictly speaking, taxes, for the purpose of construction of an exemption statute, we think that regular water rates must be deemed to be in the nature of a general tax, common upon all property similarly situated." Matter of Young Women's Christian Assoc., 156 App. Div. 295, 141 N. Y. Supp. 138, affirmed without opinion, 209 N. Y. 534, 102 N. E. 1118.

61. People v. Lawler, 74 App. Div. 553, 77 N. Y. Supp. 840.

62. People v. Sayles, 32 App. Div. 197, 53 N. Y. Supp. 67.

63. People v. Reilly, 85 App. Div. 71, 83 N. Y. Supp. 39.

64. People v. Roper, 35 N. Y. 629.

65. People v. Raymond, 194 N. Y. 189, 87 N. E. 90. As to the repeal of special tax statutes by implication, see infra, § 175.

66. Bodle v. Chenango County Mut. Ins. Co., 2 N. Y. 53; Burnside v. Whitney, 21 N. Y. 148; Ramaley v. Leland, 43 N. Y. 539, 3 Am. Rep.

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letter, and not even to that extent unless it appears to be according to the spirit and intent of the act.[67] If a statute admits of two interpretations, that which more nearly conforms to the rules of the common law is to be adopted.[68] The enactment is to be construed with reference to the common law, and it is presumed that the legislature intended to make no innovation upon common law rights further than the case requires.[69] If the common law rule and the statute can stand together, the statute will be construed so as to effectuate both.[70] The judges sometimes doubt the wisdom of an adherence to the common law rule, yet the rule

728; Kentucky Commercial Bank v. Varnum, 49 N. Y. 269; Wood v. Tunnicliff, 74 N. Y. 38; Bertles v. Nunan, 92 N. Y. 152, 44 Am. Rep. 361; Dean v. Metropolitan El. R. Co., 119 N. Y. 540, 23 N. E. 1054; In re Kaufman, 131 N. Y. 620, 30 N. E. 242, 15 L. R. A. 292; Tompkins v. Hunter, 149 N. Y. 117, 43 N. E. 532; Jones v. Albany, 151 N. Y. 223, 45 N. E. 557; O'Brien v. East River Bridge Co., 161 N. Y. 539, 56 N. E. 74, 48 L. R. A. 122; St. John v. Andrews Institute for Girls, 191 N. Y. 254, 83 N. E. 981, 14 Ann. Cas. 708; Matter of Kimberly, 37 App. Div. 106, 55 N. Y. Supp. 1024; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; Westbrook v. Miller, 98 App. Div. 590, 90 N. Y. Supp. 558; Matter of Carnegie Trust Co., 151 App. Div. 606, 136 N. Y. Supp. 466, affirmed, 206 N. Y. 390, 99 N. E. 1096, 46 L. R. A. (N. S.) 260; Matter of Ziegler, 82 Misc. 346, 143 N. Y. Supp. 562, affirmed, 161 App. Div. 589, 146 N. Y. Supp. 881; Harrington v. People, 6 Barb. 607; Morse v. Williamson, 35 Barb. 472; Chamberlain v. Western Transp. Co., 45 Barb. 218; Hyatt v. Taylor, 51 Barb. 632; Striker v. Kelly, 2 Denio 323; Deyo v. Stewart, 4 Denio 101; In re Denny, 2 Hill 220; Leland v. Tousey, 6 Hill 328; Bussing v. Bushnell, 6 Hill 382; Millered v. Lake Ontario, etc., R. Co., 9 How Pr. 238; Hayes v. Phelan, 4 Hun 733; Coles v. Burns, 21 Hun 246; People v. Houghton, 24 Hun 501; Rochester v. Close, 35 Hun 208; Johnson v. Rogers, 35 Hun 267; Lynn v. Smith, 35 Hun 275; Kaufman v. Schoeffel, 37 Hun 140; Rose v. Henry, 37 Hun 397; White v. Wood, 49 Hun 381, 2 N. Y. Supp. 673; Robinson v. Fowler, 80 Hun 101, 30 N. Y. Supp. 25; New York Assoc., etc., of Game v. Durham, 51 Super. Ct. 306; Matter of Boyd, 16 Daly 443, 12 N. Y. Supp. 284, 35 N. Y. St. Rep. 37; Matter of South Market St., 76 Hun 85, 27 N. Y. Supp. 843; Connecticut Nat. Bank v. Bayles, 17 App. Div. 596, 45 N. Y. Supp. 305.

67. Taylor v. New York, 82 N. Y. 10; Miller v. Maujer, 82 App. Div. 419, 81 N. Y. Supp. 575; Dewey v. Goodenough, 56 Barb. 54; Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 14; Haddock v. Haddock, 118 App. Div. 412, 103 N. Y. Supp. 584.

68. Burnside v. Whitney, 21 N. Y. 148; Hayes v. Davidson, 98 N. Y. 19; People v. Phyfe, 136 N. Y. 554, 32 N. E. 978, 19 L. R. A. 141; Buchner v. Tamsen, 26 App. Div. 612, 50 N. Y. Supp. 125; Millered v. Lake Ontario, etc., R. Co., 9 How. Pr. 238.

69. People v. Palmer, 109 N. Y. 110, 16 N. E. 529, 4 A. S. R. 423; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; Pillow v. Bushnell, 5 Barb. 156; Freethy v. Freethy, 42 Barb. 641; People v. Eddy, 57 Barb. 593; Isaac v. Denver, etc., R. Co., 12 Daly 340, affirmed 102 N. Y. 718; Matter of Boyd, 16 Daly 443, 12 N. Y. Supp. 284, 35 N. Y. St. Rep. 37; Howe v. Peckham, 6 How. Pr. 229, 10 Barb 656, Code Rep. N. S. 381; Whitney v. Whitney, 63 Hun 59, 18 N. Y. Supp 3, 43 N. Y. St. Rep. 841; McQueen v. Middletown Mfg. Co., 16 Johns. 5; Tompkins v. Penn Yan First Nat. Bank, 18 N. Y. Supp. 234.

70. Burnside v. Whitney, 21 N. Y. 148; Perkins v. Perkins, 7 Lans. 19.

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is firmly established.[71] As was said in one case,[72] "However much modern judges might sometimes be inclined to doubt the beneficial results to be derived from an always strict adherence to the rule, grounded upon some possible doubts of the high order of excellence in all cases of the common law, or of its being without exception the perfection of human reasoning in any other than a very narrow, technical and one-sided way, yet the rule itself is too securely and firmly established and grounded in our jurisprudence to be altered other than by legislative interference." Among those statutes which have been deemed derogatory of the common law, and hence have received a strict interpretation are statutes prohibiting actions against municipalities until the lapse of a specified time after the presentations of claims,[73] a statute requiring actual notice to city officials of defects in a sidewalk before liability should attach for injuries occasioned thereby,[74] a law limiting the amount of insurance which a parent may effect on the life of his children,[75] a statute relieving an innkeeper from liability in certain cases for the loss

71. See Billings v. Baker, 28 Barb. 343, wherein it was said: "Why, in this noon of the 19th century, and under a free government are we solemnly warned against innovations upon the common law as it existed, and the legal precedents established in the days of the Norman conqueror? Did all knowledge exist in the past? Is the glory of the ancient common law so dazzling, that the learning of he present day, and all the attempted reforms upon the system to meet the wants of the age, are to be regarded as dangerous experiments? With melancholy auguries against progress I have no sympathy. For theories which have no support but antiquity I have no veneration. For the outcry against innovation upon the mysterious excellence of the English common law, which I cannot behold, I have no reverence. I hold an honest, sensible construction of the statute, according to its true intent, to be practical wisdom; and that the spirit of justice, befitting the wants of the age, is the soundest philosophy in a system of law. I regard it as a humiliating admission of intellectual decline, and worse than weak superstition, to assume that all wisdom existed in the former common law of England, or that laws suited to the condition of a free government could only be framed by the ancient inhabitants of Britain, whom Blackstone with fond partiality calls 'our Saxon princes;' nor do I believe that it is only in the annals of past ages that we shall look for the wisdom necessary to guide us in our own. As changes are wrought in the circumstances of a people, or country, it is necessary, not only that their laws themselves, but also the spirit of the laws should be accommodated. I bow with willing submission to the shrine of legal reason. I am not opposed to seeing it traced to its sources, nor to explore its earliest teachings; but 'tempora mutantur et nos mutamur in illis.'"

72. Fitzgerald v. Quann, 109 N. Y. 441, 17 N. E. 354.

73. Jones v. Albany, 151 N. Y. 223, 45 N. E. 557. But it has been held that a statute requiring notice to be served prior to the commencement of the action is for the purpose of enabling the municipality to make an investigation, and should be liberally construed. Weisman v. New York, 169 App. Div. 558, 155 N. Y. Supp. 418.

74. Sprague v. Rochester, 159 N. Y. 20, 53 N. E. 697.

75. O'Rourke v. John Hancock Mut. Life Ins. Co., 10 Misc. 405, 31 N. Y. S. 130.

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of property of a guest,[76] and an exemption of a city from wrongful acts of its servants.[77] By statutory prohibition, the rule of the common law, that a statute in derogation of the common law is strictly construed, does not apply to the Code of Civil Procedure.[78]

§ 143. Liability of directors or stockholders.— The liability for the debts of creditors of a corporation which was formerly imposed on its directors when they failed to file the annual report,[79] was considered, so far as the acts of the directors were concerned, in the nature of a penalty and in derogation of their common law rights, and was strictly construed as to the acts of the directors constituting their default.[80] But, as to creditors of the corporation, the act was thought to be remedial and was liberally construed so as to embrace the debts within the language of the act.[81] And the liability imposed on directors for making a false report or certificate has also been thought penal in its effect, and hence strictly construed.[82] So, too, in reference to other statutes imposing a liability on stockholders for the debts of the corporation, it has been thought that the statutes were derogatory of the common law rights of the stockholder and should be strictly construed.[83] Thus, the statute (section 57 of the Stock Corporation Law) making stockholders liable for the debts due to employees, has been thought to be a penal statute to which a strict interpretation should be accorded.[84] But the rule of strict construction is not applied when liability is sought under section 66 of the Stock Corporation Law, relative to prohibited transfers to directors and stockholders. This latter statute was designed to afford a remedy to creditors and stockholders for losses actually sustained by the acts of directors and

76. Ramaley v. Leland, 43 N. Y. 539, 3 Am. Rep. 728.

77. Hardy v. Brooklyn, 7 Abb. N. Cas. 403.

78. Code Civ. Pro. § 3345.

79. This liability was repealed by chapter 354 of the Laws of 1901.

80. Garrison v. Howe, 17 N. Y. 458; Whitaker v. Masterton, 106 N. Y. 277, 12 N. E. 604; Manhattan Co. v. Kaldenberg, 165 N. Y. 1, 58 N. E. 790; Hoboken Beef Co. v. Hand, 104 App. Div. 390, 93 N. Y. Supp. 834; Shaler, etc., Quarry Co. v. Brewster, 10 Pr. Pr. 464; McComb v. Belknap, 20 Abb. N. Cas. 119, 24 N. Y. Supp. 935; Esmond v. Bullard, 16 Hun 65.

81. Morgan v. Hedstrom, 164 N. Y. 234, 58 N. E. 26. See also Jones v. Barlow, 62 N. Y. 202.

82. Torbett v. Godwin, 62 Hun 407, 27 Abb. N. Cas. 444, 17 N. Y. Supp. 46, 42 N. Y. St. Rep. 323. For the present status of this liability, see Stock Corporation Law, § 35.

83. Chase v. Lord, 77 N. Y. 1 (relative to liability until capital is paid in); Assets Realization Co. v. Howard, 70 Misc. 651, 127 N. Y. Supp. 798 (section 59 of Stock Corporation Law).

84. Farnum v. Harrison, 167 App. Div. 704, 152 N. Y. Supp. 835.

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officers of the corporation in their official capacity, and is remedial rather than penal.[85]

§ 144. Employer's liability.— In construing the Employers Liability Act of 1902 (now sections 200–204 of the Labor Law) the Appellate Division took the position that the act was in derogation of the common law rights of employers and should be strictly construed.[86] But other statutes relative to the liability of masters for injuries to their servants have received a more liberal construction. Thus, the statute requiring the furnishing of scaffolds,[87] as has been said by the Court of Appeals,[88] "is to be liberally construed to accomplish its beneficent purpose." Likewise, the statute forbidding the employment of certain persons by railroads for more than twenty-four consecutive hours has received a reasonably liberal construction.[89] So, too, it has been thought that the statute preferring a claim for wages and salaries owing to the employees of insolvent assignors is a beneficial as well as a remedial statute and should be construed liberally to meet the wrong and advance the remedy which the legislature had in mind.[90] The Workmen's Compensation Law is construed liberally in order to carry out the beneficent purposes for which it was enacted, and not strictly as a law in derogation of the common law.[91]

§ 145. Married women's acts.— The succession of statutes which have been enacted to afford married women greater liberties, and known as Married Women's Acts, have generally been deemed in derogation of the common law and have been restricted in their application.[92] As a general proposition, when referring to their relations or business transactions with other persons, their

85. Caesar v. Bernard, 156 App. Div. 724, 141 N. Y. Supp. 659, affirmed on opinion below, 209 N. Y. 570, 103 N. E. 1122.

86. Williams v. Citizen's Steamboat Co., 122 App. Div. 188, 106 N. Y. Supp. 975; Bori v. Hess, 123 App. Div. 389, 107 N. Y. Supp. 1001.

87. See Labor Law, §§ 18, 19.

88. Bohnhoff v. Fischer, 210 N. Y. 172, 104 N. E. 130.

89. Pelin v. New York Cent., etc., R. Co., 102 App. Div. 71, 92 N. Y. Supp. 468. The act referred to is now section 7 of the Labor Law.

90. In re Heath, 46 Hun 114, 11 N. Y. St. Rep. 627; Matter of Sawyer, 31 Abb. N. Cas. 342, 29 N. Y. Supp. 1097. See also Matter of Fitzgerald, 21 Misc. 226, 45 N. Y. Supp. 630.

91. In re Petrie, 215 N. Y. 335, 109 N. E. 549; Winfield v. New York Cent., etc., R. Co., 168 App. Div. 351, 153 N. Y. Supp. 499; Spratt v. Sweeny, etc., Co., 168 App. Div. 403, 153 N. Y. Supp. 505; Smith v. Price, 168 App. Div. 421, 153 N. Y. Supp. 221; Matter of Rheinwald, 168 App. Div. 425, 153 N. Y. Supp. 598; Matter of Moore, 169 App. Div. 177, 154 N. Y. Supp. 620.

92. White v. Wager, 32 Barb. 250, affirmed, 25 N. Y. 328; Kelso v. Tabor, 52 Barb. 125; Kaufman v. Schoeffel, 37 Hun 140; Perkins v.

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husbands have not been affected by the statutes unless expressly designated.[93] Thus, the statute authorizing a wife to transfer property as though she was unmarried was originally held as not allowing a transfer to the husband.[94] But, when it is clear that the statute has made a change in the common law, the rule requiring a strict construction does not apply with so much force. In such a case, the statute is not given a narrow or literal meaning, but it is given a fair construction according to the established canons of interpretation.[95]

§ 146. Remedial statutes in derogation of common law.— Some statutes are classified as both remedial and in derogation of the common law. In fact, remedial statutes are generally designed to obviate some injustice of the common law system. This double character which may attach to an act renders it uncertain whether it shall be construed liberally as a remedial statute or strictly as one in derogation of the common law. But, if a statute creates a liability where otherwise none would exist or increases a common law liability, though the statute may be placed in the category of remedial legislation, it is as a rule strictly construed.[96] And, if a statute designed to remedy existing evils provides a summary proceeding for its enforcement in derogation of the common law, the statute to that extent may be strictly construed.[97] Thus, a statute authorizing the summary seizure of animals running at large on the public highways is deemed contrary to the common law for the protection of private rights, and is construed strictly.[98] But the remedial element predominates in other statutes, and they receive a liberal construction though they are in derogation of the common law.[99] Thus,

Perkins, 7 Lans. 19. See also Berley v. Rampacher, 5 Duer 183. But see Goss v. Cahill, 42 Barb. 310, wherein the opinion is expressed that the acts of 1848 and 1849 for the more effective protection of the property of married women were remedial acts and entitled to a liberal and beneficial interpretation.

93. Winans v. Peebles, 32 N. Y. 423; Freethy v. Freethy, 42 Barb. 641.

94. Winans v. Peebles, 32 N. Y. 423; White v. Wager, 32 Barb. 250, affirmed, 25 N. Y. 328; Perkins v. Perkins, 7 Lans. 19.

95. Spencer v. Myers, 150 N. Y. 269, 44 N. E. 942, 55 A. S. R. 675, 34 L. R. A. 175.

96. Matter of Andersen, 91 App. Div. 563, 87 N. Y. Supp. 24; Tompkins v. Penn Yan First Nat. Bank, 18 N. Y. Supp. 234; Hempstead v. New York, 52 App. Div. 182, 65 N. Y. Supp. 14; Smith v. Boston, etc., R. Co., 99 App. Div. 94, 91 N. Y. 412. Compare Chamberlain v. Western Transp. Co., 44 N. Y. 305, 4 Am. Rep. 681.

97. Smith v. Moffat, 1 Barb. 65.

98. Coles v. Burns, 21 Hun 246.

99. Chamberlain v. Western Transp. Co., 44 N. Y. 305, 4 Am. Rep. 681; Herries v. Platt, 21 Hun 132.

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a liberal construction will be given to statutes enlarging a common law right of protecting property against injury.[1] For example, a statute providing for the recovery of damages for injury caused by the construction of a dangerous division fence receives a liberal interpretation.[2] So, too, the statutes authorizing the formation of limited partnership and the exemption of the special partner from general liability, though they change the common-law rule, are deemed remedial and are favorably construed.[3]

§ 147. Change in law of evidence.—A statute which makes an innovation on the common law rules of evidence, though remedial in a sense, is nevertheless construed as effecting no greater change in the law than is required by its language.[4] Thus, the provisions of the Code which authorize in certain cases the deposition of a party before or during trial, create or enlarge a privilege previously unknown in common law actions, and the deposition must be taken in the manner prescribed by the statute and not in any other way even though it be as good or better.[5] It is a general rule that the procedure prescribed for taking evidence in a manner derogatory of the common law, such as by commission, must be strictly complied with.[6] So, too, the statute prohibiting a surveyor from testifying respecting a survey unless it is shown that his measure conforms to the state standard, is restrictive of the common law rule, and is not to be extended beyond its fair import.[7]

Acts in Derogation of Common Right

§ 148. In general.—An act which infringes upon common right is strictly construed.[8] It is a presumption that the legislature did not intend to interfere with the common rights of mankind, and any interference must, therefore, be expressed, not left to implication. For example, a statute which is restrictive of the common law right of every man to repair his own vessel

1. Buckley v. Clark, 21 Misc. 138, 47 N. Y. Supp. 42.
2. Buckley v. Clark, 21 Misc. 138, 47 N. Y. Supp. 42.
3. White v. Eiseman, 134 N. Y. 101, 31 N. E. 276.
4. People v. Levin, 119 App. Div. 233, 104 N. Y. Supp. 647; Dewey v. Goodenough, 56 Barb. 54; People v. Hadden, 3 Denio 220.
5. Loewy v. Gordon, 129 App. Div. 159, 114 N. Y. Supp. 211.
6. Fleming v. Hollenback, 7 Barb. 271; Smith v. Randall, 3 Hill 495; Jackson v. Hobby, 20 Johns. 357; Richardson v. Gere, 21 Wend. 156; Halleran v. Field, 23 Wend. 38.
7. McManus v. Gavin, 77 N. Y. 36.
8. Barron v. People, 1 N. Y. 386; New York, etc., R. Co. v. Kip, 46 N. Y. 546, 7 Am. Rep. 385; In re Poughkeepsie Bridge Co., 108 N. Y. 483, 15 N. E. 601; Bridgewater, etc., Plank Road Co. v. Robbins, 22 Barb. 662; Wright v. Briggs, 2 Hill 77.

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through his own agent and in his own way, is not extended beyond its letter.[9] So, too, a person has a right to sue on any cause of action which he holds, and any statutory exception to that right must be distinctly expressed.[10] Similarly, insolvency statutes intended to deprive the creditor of all remedy for the recovery of an honest debt must be construed strictly, and should not be extended by implication beyond the fair and legitimate meaning of the terms used by the legislature.[11] And it is the natural right of a person to cross a stream at any point, and a grant to a corporation of a right to maintain a toll bridge and forbidding persons from crossing the river within a certain distance of the bridge is strictly construed.[12] Likewise, statutes passed in the exercise of the police power of the state, restricting and regulating property rights or the pursuit of lawful occupations and callings, should be construed strictly.[13] So, statutes restricting the right of a person to hawk or peddle are not received favorably by the courts.[14] And a statute making the right of foreign corporations to do business within the state dependent upon their compliance with certain requirements as to procuring certificates, being a rigorous measure and in restriction of trade, is to be reasonably interpreted.[15]

§ 149. Taking private property without consent of owner.—It is a general rule that a statute derogating common right by taking the property of one person without his consent for the benefit of another is to be strictly construed.[16] Proceedings designed to accomplish such result must be strictly pursued or the owner will not be divested of his property.[17] Thus, a statute authorizing the condemnation of lands is strictly construed in

9. New York v. Cartwright, 4 Sandf. 236.

10. Saxe v. Peck, 139 App. Div. 419, 124 N. Y. Supp. 14.

11. Salters v. Tobias, 3 Paige 338.

12. See supra, § 139.

13. People v. Sommer, 55 Misc. 55, 106 N. Y. Supp. 190.

14. Stamford v. Fisher, 140 N. Y. 187, 35 N. E. 500.

15. Ozark Cooperage Co. v. Quaker City Cooperage Co., 112 App. Div. 62, 98 N. Y. Supp. 113.

16. In re Amsterdam, 96 N. Y. 351; People v. Yonkers, 39 Barb. 266; People v. Adirondack Co., 57 Barb. 656; Sharpe v. Speir, 4 Hill 76; In re Ford, 6 Lans. 92. "It is the settled law of this state that an injury to private property cannot be justified by the plea of a statutory sanction unless the latter is expressly given, or may be so clearly implied from the powers expressly conferred that the doing of the act which occasioned the injury can fairly be said to be within the legislative contemplation." Litchfield v. Pond, 186 N. Y. 66, 78 N. E. 719.

17. Powell v. Tuttle, 3 N. Y. 396; Adams v. Saratoga, etc., R. Co., 10 N. Y. 328; Newell v. Wheeler, 48 N. Y. 486; Merritt v. Portchester, 71 N. Y. 309, 27 Am. Rep. 47; Stilwell v. Swarthout, 81 N. Y. 109; In re Amsterdam, 96 N. Y. 351; In re

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favor of the landowner, and every requisite of the statute having a semblance of benefit to the owner must be complied with.[18] A delegation of the power of eminent domain is strictly construed, and a statute purporting to convey such sovereign power is not extended by inference or implication.[19] But condemnation statutes are not to be construed so literally or strictly as to defeat the evident purpose of the legislature. They are to receive a reasonably strict and guarded construction, and the powers granted will extend no further than expressly stated, or than is necessary to accomplish the general scope and purpose of the grant. If there remains a doubt as to the extent of the power, after all reasonable intendments in its favor, the doubt should be solved adversely to the claim of power.[20] The same strict rule is applied in proceedings for the sale of an infant's real estate,[21] for the foreclosure of a mortgage by advertisement,[22] or for the sale of a decedent's real estate to pay debts.[23] Every provision of such acts having a semblance of benefit to the owner must receive compliance in order to divest his title.[24]

§ 150. Tax laws.— When there is any serious doubt as to the construction which a taxing statute shall receive, such doubt is

Rochester Electric R. Co., 123 N. Y. 351, 25 N. E. 381; Matter of DeCamp, 19 App. Div. 564, 46 N. Y. Supp. 293; Corwin v. Merritt, 3 Barb. 341; Harrington v. People, 6 Barb. 607; Rathbun v. Acker, 18 Barb. 393; People v. Jefferson County Court, 56 Barb. 136; People v. Eddy, 57 Barb. 593; In re Opening House Ave., 67 Barb. 350; Bloom v. Burdick, 1 Hill 130, 37 Am. Dec. 299; Sharp v. Johnson, 4 Hill 92, 40 Am. Dec. 259; Sherwood v. Reade, 7 Hill 431; In re Ford, 6 Lans. 92; Jones v. Walker, Sheld. 350, affirmed, 63 N. Y. 612. "While the law requires a strict compliance with every requirement of a statute by which an individual may be divested of his property against his will, especially every requirement essential to the protection of the rights of the property owner, it looks to the substance rather than to the form, and, if there is a substantial compliance with every essential condition and requisite of the statute, it is sufficient, and the power will be duly exercised." In re Washington Park Com'rs, 52 N. Y. 131.

18. Dyckman v. New York, 5 N. Y. 434; Rensselaer, etc., R. Co. v. Davis, 43 N. Y. 137; In re Poughkeepsie Bridge Co., 108 N. Y. 483, 15 N. E. 601.

19. See supra, § 140.

20. New York, etc., R. Co. v. Kip, 46 N. Y. 546, 7 Am. Rep. 385. See also Leffmann v. Long Island R. Co., 120 App. Div. 528, 105 N. Y. Supp. 487, affirmed on opinion below, 197 N. Y. 513, 90 N. E. 1160. And see Matter of N. Y., etc., R. Co., 53 Hun 633 mem., 6 N. Y. Supp. 105, where the opinion is expressed that an act authorizing the acquisition of additional land which may be necessary for the operation of a railroad is remedial, and the public welfare is benefited thereby, and the statute should be liberally construed.

21. Ellwood v. Northrup, 106 N. Y. 172, 12 N. E. 590; Matter of McFeeley, 2 Redf. 541.

22. Sherman v. Dodge, 6 Johns. Ch. 107.

23. Sheldon v. Wright, 5 N. Y. 497.

24. Ellwood v. Northrup, 106 N. Y. 172, 12 N. E. 590; Matter of McFeeley, 2 Redf. 541.

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usually resolved in favor of the taxpayer.[25] If the statute is inconsistent, the taxpayer is entitled to the reading most favorable to him.[26] The law is strictly construed and the government takes nothing by way of a tax except what is clearly authorized by the words of the statute.[27] And this doctrine is especially applicable in the case of special assessments against property. Statutes imposing special taxation and therefore special burdens upon the owners of property are in the nature of usual exactions and should be strictly construed in favor of the owner.[28] Thus, special tax levies, such as the transfer tax,[29] local assessments,[30] and the stock transfer tax,[31] are deemed special burdens to which the citizens cannot be subjected without clear warrant of law. Where it is sought to divest one's title to property through tax sale proceedings, the statute must be strictly pursued.[32] Every requisite of the statute having a semblance of benefit to the owner must be substantially complied with.[33] The statute is construed strongly against a forfeiture of title and in favor of the retention of title by the owner and of a right to redeem.[34]

§ 151. Restraint of liberty.—A statute whose tendency is toward the restraint of the personal liberty of the individual is to be strictly construed in favor of the individual.[35] Thus, as is

25. Rochester v. Rochester R. Co., 187 N. Y. 216, 79 N. E. 1010; People v. Williams, 198 N. Y. 238, 91 N. E. 638, 139 A. S. R. 809; People v. Gaus, 198 N. Y. 250, 91 N. E. 634; Matter of Wolfe, 89 App. Div. 349, 85 N. Y. Supp. 949; People v. Gaus, 134 App. Div. 83, 118 N. Y. Supp. 835, reversed on other grounds, 198 N. Y. 54, 91 N. E. 266, 28 L. R. A. (N. S.) 371; People v. Metz, 141 App. Div. 600, 126 N. Y. Supp. 986.

26. People v. Williams, 198 N. Y. 238, 91 N. E. 638, 139 A. S. R. 809; People v. Sohmer, 157 App. Div. 1, 141 N. Y. Supp. 635, affirmed without opinion, 210 N. Y. 621, 104 N. E. 1137; Matter of Stebbins, 52 Misc. 438, 103 N. Y. Supp. 563.

27. People v. Gaus, 198 N. Y. 250, 91 N. E. 634; Matter of Wolfe, 89 App. Div. 349, 85 N. Y. Supp. 949; People v. Purdy, 69 Misc. 367, 125 N. Y. Supp. 986.

28. In re Harbeck, 161 N. Y. 211, 55 N. E. 850; People v. Sayles, 32 App. Div. 197, 53 N. Y. Supp. 67, affirmed, 157 N. Y. 677, 51 N. E. 1093; People v. Metz, 141 App. Div. 600, 126 N. Y. Supp. 986.

29. In re Harbeck, 161 N. Y. 211, 55 N. E. 850; Matter of Kennedy, 113 App. Div. 4, 99 N. Y. Supp. 72; People v. Cook, 158 App. Div. 74, 142 N. Y. Supp. 692, affirmed without opinion, 209 N. Y. 578, 103 N. E. 1130; Matter of Hodges, 86 Misc. 367, 148 N. Y. Supp. 424.

30. People v. Utica, 7 Abb. N. Cas. 414.

31. People v. Gaus, 198 N. Y. 250, 91 N. E. 634.

32. Whitney v. Thomas, 23 N. Y. 281; People v. Metz, 141 App. Div. 600, 126 N. Y. Supp. 986; People v. Utica, 7 Abb. N. Cas. 414; Hubbell v. Weldon, Hill & D. Supp. 139.

33. People v. Metz, 141 App. Div. 600, 126 N. Y. Supp. 986.

34. Rochester v. Rochester R. Co., 109 App. Div. 638, 96 N. Y. Supp. 152, modified, 187 N. Y. 216, 79 N. E. 1010.

35. Matter of Baker, 29 How. Pr. 485.

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shown in a preceding paragraph,[36] a strict interpretation is accorded to penal laws.[37] And, so, statutes relative to contempts of court are not liberally construed, for their enforcement may result in the imprisonment of the offender.[38] In fact, the rule is especially applicable in the case of contempt statutes, for the exercise of the power of committal may result in an imprisonment without a jury trial.[39] In cases of doubtful construction or of conflicting provisions, that interpretation should be given which best protects the rights of an accused to a trial according to the common law.[40]

§ 152. Statutes of limitation.— In a case decided by the Court of Appeals,[41] it was said by Judge Denio, "The courts have uniformly applied to statutes of limitation a liberal construction, and in many instances have accommodated the strict language of the act so as to effectuate the general intention of the legislature." In that particular case, it was an exception to the operation of the statute which received the liberal construction, and hence the decision was favorable to the creditor.[42] In other cases, it has been thought that statutes of limitation are in derogation of common law rights, and hence were to be strictly construed.[43] If there is any class of limitations which are liberally construed it is those which are statutes of repose. Where the statute is one which operates within a few months, such as the short statute against claims rejected by executors or administrators, it is penal in its nature and receives a strict construction.[44] So, too, statutes which limit in point of time the right to move for a new trial, or to take an appeal, are to be construed in favor of the party desiring a review.[45] But a statute limiting

36. § 132.

37. But, even though an act is penal, if it is also in favor of personal liberty, it may be liberally construed. Fish v. Fisher, 2 Johns. Cas. 89.

38. Dollard v. Koronsky, 67 Misc. 90, 121 N. Y. Supp. 987, affirmed 138 App. Div. 213, 123 N. Y. Supp. 11; People v. Masonic Guild Assoc., 22 Civ. Pro. 74.

39. Dollard v. Koronsky, 67 Misc. 90, 121 N. Y. Supp. 987, affirmed 138 App. Div. 213, 123 N. Y. Supp. 11. Statutes for summary convictions are inapplicable in any case, unless the language of the law is positive and unequivocal. Bennett v. Ward, 3 Caines 259.

40. People v. Craig, 195 N. Y. 190, 88 N. E. 38.

41. Olcott v. Tioga R. Co., 20 N. Y. 210, 75 Am. Dec. 393.

42. Prior to this decision, it was held that the exceptions in a statute of limitations would not be extended, by construction, to cases within the reason but not within the letter of the exceptions. Sacia v. DeGraaf, 1 Cow. 356.

43. Rose v. Henry, 37 Hun 397.

44. Prentice v. Whitney, 8 Hun 300; Broderick v. Smith, 3 Lans. 26

45. Rankin v. Pine, 4 Abb. Pr. 309; Matter of Glenside Woolen Mills, 92 Hun 188, 36 N Y. Supp. 593.

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the time within which indictments may be found may be deemed a surrender by the state of its right to try and punish criminal offenses at its discretion without limit as to time; and is, therefore, an act of grace and favor which is to be liberally construed, when construction is required, in favor of the criminal.[46]

Remedial Statutes

§ 153. In general.— Remedial statutes generally meet the approval of the courts, and they are liberally construed so as to suppress the mischiefs of the former rule and advance the remedy for those mischiefs.[47] In the construction of a remedial statute, if a case is within the beneficial intent of the law, it is deemed within the statute, though it is not within the letter of the law.[48] But, while a remedial statute is construed with greater liberality than is allowed with reference to a penal statute, it is nevertheless to receive a reasonable interpretation with a view of accomplishing the purpose intended.[49] The object of construction is to give effect to the intent of the lawmakers, and the courts should not give a remedial statute such an extended construction that legislative intent is thereby violated. Many classes of statutes have been thought to be remedial, and hence have received favorable constructions. Thus, statutes providing for the ascertainment and payment of damages to property caused by changes in

46. People v. Lord, 12 Hun 282.

47. Spear v. Wardell, 1 N. Y. 144; Hudler v. Golden, 36 N. Y. 446; Ayers v. Lawrence, 59 N. Y. 192; Dayton v. Johnson, 69 N. Y. 419; Berger v. Verrelmann, 127 N. Y. 281, 27 N. E. 1065, 12 L. R. A. 808; People v. Fitch, 147 N. Y. 355, 41 N. E. 695; Allen v. Stevens, 161 N. Y. 122, 55 N. E. 568; Seibert v. Dunn, 216 N. Y. 237, 110 N. E. 447; People v. Lord, 9 App. Div. 458, 41 N. Y. Supp. 343, 75 N. Y. St. Rep. 760; Matter of Williams, 31 App. Div. 617, 52 N. Y. Supp. 700; Chrystal v. New York, 63 App. Div. 93, 71 N. Y. Supp. 352; Wear v. Koehler, 168 App. Div. 115, 153 N. Y. Supp. 773; Troy Carriage Works v. Muxlow, 16 Misc. 561, 38 N. Y. Supp. 938; Douglass v. Seiferd, 18 Misc. 188, 41 N. Y. Supp. 289, 75 N. Y. St. Rep. 698; People v. Welde, 28 Misc. 582, 59 N. Y. Supp. 1030; People v. Foster, 40 Misc. 19, 81 N. Y. Supp. 212; Hamlin v. Bender, 92 Misc. 16, 155 N. Y. Supp. 963; Fort v. Burch, 6 Barb. 60; Chandler v. Northrup, 24 Barb. 129; West v. McGurn, 43 Barb. 198; Barnes v. Huson, 60 Barb. 598; Griggs v. Griggs, 66 Barb. 287; Gillespie v. Winberg, 4 Daly 318; Fuller v. Rood, 3 Hill 258; Warner v. Hudson River R. Co., 5 How. Pr. 454; People v. Berberrich, 11 How. Pr. 289; Roach v. O'Dell, 33 Hun 320, affirmed 99 N. Y. 635, 1 N. E. 408; People v. Beehler, 63 Hun 42, 17 N. Y. Supp. 418; Jackson v. Gilchrist, 15 Johns. 89; Throop v. Cheeseman, 16 Johns. 264; Clark v. Clark, 8 Paige 152; Weltman v. Posenecker, 19 Misc. 592, 44 N. Y. Supp. 406; Atlas Refining Co. v. Smith, 52 App. Div. 109, 64 N. Y. Supp. 1044; People v. Stillings, 76 App. Div. 143, 78 N. Y. Supp. 942; Clark v. Brown, 18 Wend. 213; Donaldson v. Wood, 22 Wend. 395.

48. Harbeck v. Pupin, 123 N. Y. 115, 25 N. E. 311; Matter of Williams, 31 App. Div. 617, 52 N. Y. Supp. 700. And see supra, § 62 as to departure from literal interpretation.

49. Tompkins v. Purcell, 12 Hun 662.

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street grades are remedial and liberally construed.[50] And acts for the prevention of frauds are construed so as to effectuate their purpose, if possible.[51] Likewise, statutes designed to prevent the waste of public moneys,[52] acts granting preferences to claims of employees for wages,[53] for provisions setting aside certain allowances for a widow,[54] statutes for the improvement of the civil service,[55] the act for the recording of vital statistics,[56] and statutes regulating the observance of the sabbath,[57] have been classified as remedial and accorded a liberal interpretation.

§ 154. **Liens.**— Statutes authorizing liens afford an additional remedy for the enforcement of obligations, and receive a liberal application. Thus, the courts without difficulty have reached the conclusion that section 475 of the Judiciary Law giving an attorney a lien on his client's cause of action should be liberally construed to secure the rights of the attorney.[58] But the courts have had more difficulty in determining the construction which the Mechanics' Lien Laws should have. When such laws were first enacted, the courts thought they were of an extraordinary nature and in derogation of the common law and it was held that they should be strictly construed and that the lien would not be effective unless the statute was strictly followed.[59] Later, however, the view was taken that such acts should be liberally construed to the benefit of the creditor.[60] The statute itself now prescribes the construction it shall receive by providing, "This article is to be construed liberally to secure the beneficial interests

50. People v. Fitch, 147 N. Y. 355, 41 N. E. 695; People v. Lord, 9 App. Div. 458, 41 N. Y. Supp. 343, 75 N. Y. St. Rep. 760.

51. Matter of Gibson, 128 App. Div. 769, 113 N. Y. Supp. 266.

52. Matter of Eastchester, 53 Hun 181, 6 N. Y. Supp. 120.

53. Matter of Fitzgerald, 21 Misc. 226, 45 N. Y. Supp. 630; In re Heath, 46 Hun 114, 11 N. Y. St. Rep. 627; Matter of Sawyer, 31 Abb. N. Cas. 342, 29 N. Y. Supp. 1097.

54. Matter of Williams, 31 App. Div. 617, 52 N. Y. Supp. 700; Matter of Berns, 52 Misc. 426, 103 N. Y. Supp. 167.

55. People v. Welde, 28 Misc. 582, 59 N. Y. Supp. 1030.

56. Matter of Lauterjung, 48 Super. Ct. 308.

57. Hamlin v. Bender, 92 Misc. 16, 155 N. Y. Supp. 963.

58. Fischer-Hansen v. Brooklyn Heights R. Co., 173 N. Y. 492, 66 N. E. 395; Tynan v. Mart, 53 Misc. 49, 103 N. Y. Supp. 1033.

59. McMahon v. Hodge, 2 Misc. 234, 21 N. Y. Supp. 971; Roberts v. Fowler, 4 Abb. Pr. 263, 3 E. D. Smith 632; Rafter v. Sullivan, 13 Abb. Pr. 261.

60. Martin v. Ambrose A. Gavigan Co., 107 App. Div. 279, 95 N. Y. Supp. 14. "The statute which gives to a contractor, mechanic or material man a lien upon the lands of another, created a remedy in such cases which was unknown to the common law, and while it must receive a liberal construction to secure the beneficial purposes which the legislature had in view, it cannot be extended to a state of facts not fairly within its general scope and purview." Spruck v. McRoberts, 139 N. Y. 193, 34 N. E. 896.

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and purposes thereof. A substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce the same." [61] But this section of the law does not authorize the court to dispense entirely with the requirements of the statutes as to the contents of the notice of the lien.[62]

§ 155. **Rights of persons under disability.**— The rights of infants, incompetents, and other persons under disability are tenderly protected by the courts. Statutes intended for the protection of the rights of such persons are, therefore, liberally construed in their favor.[63] And statutes in general terms affecting titles to real estate do not interfere with the rights of infants, when the spirit of the statutes is opposed to such construction.[64] So, too, the provisions of the Code of Civil Procedure authorizing poor persons to sue without liability for costs, is held to be remedial in its nature and is construed liberally with a view to the beneficial ends proposed.[65]

§ 156. **Exemptions from execution.**— Statutes which exempt a portion of a debtor's property from liability for his debts are in derogation of the common law, and for this reason it has been thought wise not to extend their operation.[66] But the better view is that reasonable exemptions (especially of necessaries) are the result of humane and beneficent legislative designs, and that they should receive an enlarged and liberal construction.[67] But, whether the construction be strict or liberal, it should be such as insures the full benefit of the statute to the debtor.[68] For example, when a debtor has recovered a judgment against his creditor for an unlawful levy upon and sale of exempt property, the courts will extend the statute so as to protect the judgment from

61. Lien Law, § 23.

62. Waters v. Goldberg, 124 App. Div. 511, 108 N. Y. Supp. 992; Bradley v. Huber Co., 146 App. Div. 630, 131 N. Y. Supp. 388, affirmed without opinion 210 N. Y. 627, 105 N. E. 1102.

63. Jackson v. Wood, 7 Johns. 290. See also Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351.

64. Gallatian v. Cunningham, 8 Cow. 361.

65. Weltman v. Posenecker, 19 Misc. 592, 44 N. Y. Supp. 406, 26 Civ. Pro. 238, 78 N. Y. St. Rep. 406. Compare Moore v. Cooley, 2 Hill 412, holding that statutes authorizing persons to prosecute in forma pauperis should be construed strictly against the applicant.

66. Rue v. Alter, 5 Denio 119.

67. Ford v. Johnson, 34 Barb. 364; Wheeler v. Cropsey, 5 How. Pr. 288; Cantrell v. Conner, 51 How. Pr. 45; Carpenter v. Herrington, 25 Wend 370, 37 Am. Dec. 239.

68. Tillotson v. Wolcott, 48 N. Y. 188.

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the grasp of the creditor until a reasonable opportunity has been afforded the debtor of again purchasing exempt property.[69]

§ 157. Matters of procedure.—Acts designed to simplify legal procedure are generally construed as remedial statutes entitled to a liberal construction. Thus, a statute which avoids some niceties of ancient forms of pleading is liberally interpreted as an act of highly remedial legislation.[70] And statutes which change the old procedure so as to afford new remedies to parties are generally considered remedial and are given a broad construction.[71] Thus, the statutes authorizing taxpayer's action to prevent the waste of public moneys should receive a liberal construction to suppress the mischief of wrongful acts of public officers.[72] So, too, the amendment to section 1771 of the Code of Civil Procedure permitting the modification of decrees for permanent alimony was held to be remedial and entitled to the largest, fullest and most extensive meaning.[73] Likewise, section 1919 of the Code of Civil Procedure authorizing the maintenance of actions against the president or treasurer of unincorporated associations of seven or more members, has been held remedial.[74] In matters of evidence, section 829 of the same Code regulating evidence of communications of deceased persons,[75] and section 834 relative to the evidence of physicians,[76] are deemed beneficial enactments which are given a liberal interpretation.

§ 158. Appeals.— Statutes giving the right of appeal are always liberally construed in furtherance of justice, and such an interpretation as will work a forfeiture of the right is not favored.[77] Thus, acts which limit in point of time the right to move for a new trial, or to take an appeal, are liberally construed in favor of the party desiring a review.[78] So, too, a statute which attempts to cut off the power of the courts to review the action of inferior tribunals, or administrative officers acting not according to

69. Tillotson v. Wolcott, 48 N. Y. 188.

70. Fuller v. Rood, 3 Hill 258.

71. Carpenter v. Manhattan Life Ins. Co., 22 Hun 49.

72. Ayers v. Lawrence, 59 N. Y. 192; Hicks v. Cocks, 167 App. Div. 862, 153 N. Y. Supp. 776.

73. Tonjes v. Tonjes, 14 App. Div. 542, 43 N. Y. Supp. 941.

74. National Bank v. Lasher, 1 Thomp. & C. 313.

75. Holcomb v. Holcomb, 95 N. Y. 316.

76. Schamberg v. Whitman, 75 Misc. 215, 135 N. Y. Supp. 262, affirmed, 151 App. Div. 939, 135 N. Y. Supp. 1141.

77. Pearson v. Lovejoy, 53 Barb. 407, 35 How. Pr. 193.

78. Rankin v. Pine, 4 Abb. Pr. 309; Matter of Glenside Woolen Mills, 92 Hun 188, 36 N. Y. Supp. 593; People v. Stephenson, 91 Hun 613, 36 N. Y. Supp. 595.

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established legal procedure, should not be enlarged or extended by construction beyond the fair import of its language.[79] It is recognized that administrative officers and inferior judges and magistrates are frequently men without legal experience, and it is deemed indispensable to the security of the citizen that a superintending power should exist to restrain irregularities and to correct errors of law.[80]

Acts Promoting Public Benefit

§ 159. In general.— It is a general rule that statutes designed to promote the public good will receive a liberal construction and be expounded in such a manner that they may, as far as possible, attain the end in view.[81] Such statutes will not be construed so as to advance a private interest at the expense of the public good.[82] Thus, exceptions in the Liquor Tax Law forbidding the issuance of licenses to places within prescribed distances of churches and schools are liberally construed so as to restrict the traffic.[83] And statutes for the incorporation and management of religious corporations receive a reasonable and liberal construction for the benefit of the institutions.[84] Similarly, a statute for the creation of a corporation for rescuing waifs of society should receive a liberal interpretation to carry out such beneficent purpose.[85] Generally a public grant is construed against the grantee and in favor of the public;[86] but colonial charters were designed to be the instruments upon which the institutions of a great political community were to be founded, and their provisions must be liberally interpreted whenever necessary to accomplish the purpose of their creation.[87] And the strict construction which is usually accorded to penal statutes is relaxed when the statute imposing the penalty is made for the public benefit.[88] On the other hand, statutes which are *contrary* to the public good may receive a

79. In re Canal Street, 12 N. Y. 406; People v. Skinner, 159 N. Y. 162, 53 N. E. 806; Ex p. Heath, 3 Hill 42.

80. In re Canal St., 12 N. Y. 406.

81. Englishbe v. Helmuth, 3 N. Y. 294; Cotheal v. Brouwer, 5 N. Y. 562; United States Tel. Co. v. Western Union Tel. Co., 56 Barb. 46; People v. Bartow, 6 Cow. 290; Health Department v. Lalor, 38 Hun 542; Matter of Eastchester, 53 Hun 181, 6 N. Y. Supp. 120; Jerome v. Ross, 7 Johns. Ch. 315, 11 Am. Dec. 484.

82. Jerome v. Ross, 7 Johns. Ch. 315, 11 Am. Dec. 484.

83. Hering v. Clement, 133 App. Div. 293, 117 N. Y. Supp. 747, affirmed, 196 N. Y. 218, 89 N. E. 450.

84. People v. Peck, 11 Wend. 604, 27 Am. Dec. 104.

85. Simmons v. Burrell, 8 Misc. 388, 28 N. Y. Supp. 625, 59 N. Y. St. Rep. 554.

86. See supra, § 139.

87. DeLancey v. Piepgras, 138 N. Y 26, 33 N. E. 822.

88. See supra, § 136.

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strict construction. Thus, an enactment whose effect is to place the public money at the uncontrolled disposal of irresponsible persons not chosen by the people or appointed by any public body or under the control of any public officer, should be strictly and narrowly construed.[89]

§ 160. Public improvements.—A statute providing for an improvement which will inure to the public benefit is liberally construed so as to effectuate the improvement. And it has been thought that this doctrine is especially forceful in the case of a great public project, calculated to intimidate by its novelty, its expense and its magnitude.[90] An act authorizing the acquisition of additional land which might be necessary for the operation of a railroad has been considered a benefit to the public welfare and given a liberal construction.[91] But, in the construction of acts beneficial to the public, the benefits in view are not to be permitted to control the legislative intent as evidenced by wording of the enactments.[92] The doctrine now under consideration receives its force only in the case of an ambiguity in a statute. When the meaning of an act is not plain, that construction is to be preferred which causes no injury to the public interests.[93]

§ 161. Railroad regulation.— Police regulations prescribing additional duties to be performed by railroads, when they are enacted for the benefit of passengers or the public, are, as a general rule, liberally construed. For example, the statute requiring cattle guards at crossings is thought to have been designed, not merely to prevent loss to the owners of cattle, but also to protect passengers from accident; and it is, therefore, liberally construed to effectuate the purpose of its framers and to afford adequate protection to the public.[94] So, too, the act regulating the heating of trains is to be liberally construed for the protection of passengers.[95] Even if the statute prescribes a penalty against the railroad, it may be broadly construed, for it is the rule that penal statutes beneficial to the public will be equitably

89. People v. Rome, 136 N. Y. 489, 32 N. E. 984.

90. Rogers v. Bradshaw, 20 Johns. 735.

91. Matter of New York, etc., R. Co., 53 Hun 633 mem., 6 N. Y. Supp. 105.

92. People v. Thompson, 98 N. Y. 6; Clarke v. Rochester, 24 Barb. 446.

93. See supra, § 88.

94. Evans v. Utica, etc. R. Co., 44 Misc. 345, 89 N. Y. Supp. 1089, holding that the statute applies to street railways.

95. People v. New York, etc., R. Co., 55 Hun 409, 608, 8 N. Y. Supp. 672, 29 N. Y. St. Rep. 172, affirmed 123 N. Y. 635, 25 N. E. 982.

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construed.[96] Thus, the act requiring locomotives to give a signal upon approaching crossings has been liberally construed.[97] And the act rendering a railroad company liable for the wages of servants in the employ of contractors has been thought to be remedial legislation,[98] and, as such, entitled to a liberal interpretation.[99] An act, however, which is for the benefit of the railroad company and changes the common law rule is generally strictly construed.[1] Thus, the law releasing a railroad company from liability for injuries to a passenger riding on the platform, provided a notice is posted and the company has furnished proper accommodations for passengers inside of the cars, is for the benefit of the company and they must bring themselves strictly within the statute.[2] A statutory prohibition against the issuance of bonds or evidences of indebtedness in connection with the consolidation of railroad companies, being in derogation of the general authority otherwise given to consolidate, must be strictly, not broadly, construed.[3]

VIII. Repeal, Expiration, and Revival of Statutes

Express Repeal, Expiration, and Revival

§ 162. Express repeals.— One state law may be abrogated by another state statute in either of two ways. It may be repealed by the enactment of a later statute in conflict therewith, though the later statute makes no explicit reference to the earlier.[3a] Or the earlier statute may be repealed by an express reference thereto with an explicit statement that the earlier statute is repealed. To effect an express repeal, it is, perhaps, the better practice to describe the act by its title or by the number of the chapter and the year of its enactment.[3b] But this is not necessary in all cases.

96. See supra, § 136. The statute giving a penalty for charging excess fare is held to be entitled to a fair construction, whether regarded as penal or remedial, so as to carry into effect the intention of the makers. Fisher v. New York Cent., etc., R. Co., 46 N. Y. 644.

97. People v. New York Cent. R. Co., 25 Barb. 199.

98. Kent v. New York Cent. R. Co., 12 N. Y. 628; Warner v. Hudson River R. Co., 5 How. Pr. 454.

99. Warner v. Hudson River R. Co., 5 How. Pr. 454. But see Millered v. Lake Ontario, etc., R. Co., 9 How. Pr. 238, wherein the opinion is expressed that the act was in derogation of the common law and should be construed strictly.

1. See supra, § 142, as to the construction of acts in derogation of the common law.

2. Willis v. Long Island R. Co., 32 Barb. 398, affirmed 34 N. Y. 670.

3. Continental Securities Co. v. New York Cent., etc., R. Co., 168 App. Div. 345, 153 N. Y. Supp. 879.

3-a. See infra, §§ 170-179, as to repeals by implication.

3-b. Chegaray v. Jenkins, 3 Sandf 409, affirmed 5 N. Y. 376.

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Any description which will enable the courts to identify the law or the part thereof which the legislature intends to repeal will have that result.[3c] It is not required that the legislature assign any reason for the repeal of a statute.[4] The repeal by the Consolidated Laws of a statute includes an amendment of the statute repealed.[5] A repealing clause is subject to the same rules of construction as other enactments. The intent of the legislature must control over the literal meaning of the words used. Resort may be had to other acts *in pari materia* and to the surrounding circumstances in order to discover the legislative intent. But, if no reason is apparent why the plain language of the repealing act should not be interpreted according to its obvious significance, there is no room for construction, and the repeal must be carried out.[6] If the legislature expressly repeals a particular clause of an act, but not the whole act, the other clauses are not repealed, but in legal construction are confirmed.[7] Those parts of a statute which have been repealed may properly be employed to assist in construing the other parts.[8]

§ 163. Schedule of repeals.— Upon a consolidation or revision of statutes, the legislature frequently drafts a schedule of laws thereby repealed. The practice is one which is advised by the courts.[9] In the absence of anything to indicate that the legislature has made a mistake and erroneously designated the statute repealed,[10] the acts enumerated in the schedule are deemed expressly repealed. Upon a revision or consolidation of statutes, the circumstance that a prior act is not included in the schedule of repeals does not necessarily forbid a holding that it has been impliedly repealed;[11] yet, when other statutes of cognate effect are included in the schedule, its absence tends to show that it

3-c. Harrington v. Rochester, 10 Wend. 547.

4. See Long Sault Development Co. v. Kennedy, 212 N. Y. 1, 105 N. E. 849, Ann. Cas. 1915D 56.

5. General Construction Law, § 91. And see supra, § 118, as to the effect upon the original act of a repeal of an amendatory act.

6. Smith v. People, 47 N. Y. 330.

7. People v. Barker, 2 Wheel. Crim. 19.

8. See supra, § 59.

9. "It is much to be regretted that the framers of the code failed to annex to their labors, a general repealing statute enumerating the acts and parts of acts that were meant to be abrogated. Many of the difficulties that have arisen in the construction of the code, and those that have most perplexed and divided the minds of judges, must be ascribed to this omission, and of this the question now before us is a striking example." Moore v. Westervelt, 3 Sandf. 762, Code Rep. (N. S.) 131.

10. As to errors in the schedule of repeals, see supra, § 73.

11. See infra, § 178.

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remains in force.[12] *Expressio unius est exclusio alterius.*[13] When portions of a law are excepted from repeal by the schedule, the portion so excepted does not become engrafted upon the law to which the schedule is attached.[14] It is prescribed by statute that "when two numbers in a schedule of repeals of the consolidated laws are connected by a hyphen both such numbers are included as well as all intermediate numbers."[15] A hasty consideration of the question would incline one to the view that such a statute is unnecessary, for the rule seems too clear to require a solemn legislative declaration. But, in a case not covered by the statute and governed by peculiar circumstances, it was held upon mature deliberation that a repeal of sections 1–3 of a certain act did not repeal section 2.[16]

§ 164. Simultaneous repeal and re-enactment.— Upon the repeal of a statute and its re-enactment in another form, such clauses in the earlier acts as are not retained in the later are deemed repealed by necessary implication.[17] But it is also the rule that the provisions of a law repealing a prior law, which are substantial re-enactments of the provisions of the prior law, shall be construed as a continuation of such provisions, modified or amended according to the language employed, and not as new enactments.[18] This rule is now enacted in the General Construction Law,[19] but the statute is merely declaratory of the rule

12. Western New York Inst., etc. v. Broome County, 82 Misc. 63, 143 N. Y. Supp. 241.

13. As to the maxim of expressio unius est exclusio alterius, see supra, § 130.

14. Matter of Lampson, 22 Misc. 198, 49 N. Y. Supp. 576, affirmed, 33 App. Div. 49, 53 N. Y. Supp. 531, 161 N. Y. 511, 56 N. E. 9.

15. General Construction Law, § 96.

16. Lowman v. Billington, 65 Misc. 111, 119 N. Y. Supp. 825.

17. See infra, § 178.

18. Ingersoll v. Nassau Electric R. Co., 157 N. Y. 453, 52 N. E. 545, 43 L. R. A. 236; In re Davies, 168 N. Y. 89, 61 N. E. 118, 56 L. R. A. 855; McAvoy v. New York, 52 App. Div. 485, 65 N. Y. Supp. 274; People v. Wells, 94 App. Div. 271, 87 N. Y. Supp. 1107; Close v. Potter, 2 Misc. 1, 21 N. Y. Supp. 1086; Roddy v. Brooklyn Heights R. Co., 23 Misc. 373, 52 N. Y. Supp. 885, affirmed 32 App. Div. 311, 52 N. Y. Supp. 1025; Matter of Connellan, 25 Misc. 592, 56 N. Y. Supp. 157; Boyce v. Perry, 26 Misc. 355, 57 N. Y. Supp. 214; People v. Steuben County, 41 Misc. 590, 85 N. Y. Supp. 244, affirmed 93 App. Div. 604, 87 N. Y. Supp. 1144, 183 N. Y. 114, 75 N. E. 1108; Matter of Jones, 54 Misc. 202, 105 N. Y. Supp. 95; Moore v. Owen, 58 Misc. 332, 109 N. Y. Supp. 585; Western New York Inst. v. Broome County, 82 Misc. 63, 143 N. Y. Supp. 241; Bandler v. Hill, 84 Misc. 359, 146 N. Y. Supp. 98, affirmed, 163 App. Div. 970, 148 N. Y. Supp. 1105; Engleheim v. Illinois Surety Co., 85 Misc. 588, 148 N. Y. Supp. 1072; Pier v. George, 17 Hun 207; People v. Bell, 4 N. Y. Supp. 869, affirmed without opinion 125 N. Y. 722, 26 N. E. 756; Close v. Potter, 2 Misc. 1, 21 N. Y. Supp. 1086; Ely v. Azoy, 39 Misc. 669, 80 N. Y. Supp. 620; United States Condensed Milk Co. v. Smith, 116 App. Div. 15, 101 N. Y. Supp. 129.

19. General Construction Law, § 95.

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previously enunciated by the courts.[20] Thus, while the statutory declaration does not control in the construction of re-enactments of the Constitution, nevertheless the same principle is applicable.[21] The effect of this doctrine is that rights which have accrued under the old law are saved upon its repeal, but the new law controls future cases.[22] If any provision of a law be repealed and, in substance, re-enacted, a reference in any law to such repealed provision is deemed a reference to such re-enacted provision.[23]

§ 165. Expiration of statutes.— The effectiveness of a statute may expire when the court of last resort has declared its unconstitutionality. The act, however, is not thereby repealed. It remains among the recorded acts of the state and is subject to amendment so as to harmonize with the fundamental law.[24] The force of a statute may also expire by reason of termination of a time limit expressed therein. There is no constitutional objection to the enactment of a statute which shall be in force for a designated number of years or until the happening of some contingency. When a statute professes to repeal absolutely a prior law, and substitutes other provisions on the same subject, which are limited to continue only to a certain time, it has been said that the prior law does not revive after the repealing statute is spent, unless the intention to that effect is expressed.[25] It is a maxim of the common law that, the reason for the law ceasing, the law itself ceases. *Cessante ratione legis cessat ipsa lex.* For example, under the common law, statutes did not run as against a married woman's causes of action because she could not sue; but, after the Married Women's Acts permitted her to sue, it was held that the limitations applied to married women.[26] But this rule is applicable, if at all, to the unwritten law, not to written law. The courts have no authority to say that the reason for the enactment of a constitutional or statutory provision has ceased to exist, and that therefore it will be judicially repealed and disregarded.[27] And, too, there are many unwritten rules pertaining

20. Allison v. Welde, 172 N. Y. 421, 65 N. E. 263.
21. Allison v. Welde, 172 N. Y. 421, 65 N. E. 263.
22. People v. Steuben County, 41 Misc. 590, 85 N. Y. Supp. 244, affirmed 93 App. Div. 604, 87 N. Y. Supp. 1144, 183 N. Y. 114, 75 N. E. 1108; Close v. Potter, 2 Misc. 1, 21 N Y. Supp. 1086.
23. General Construction Law, § 80. And see supra, § 117.
24. Richards v. Richards, 76 N. Y. 186.
25. Rome v. Knox, 14 How. Pr. 268.
26. Ball v. Bullard, 52 Barb. 141.
27. Brown v. Clark, 77 N. Y. 369; People v. Rice, 135 N. Y. 473, 31 N. E. 921, 16 L. R. A. 836; Loomis v. Loomis, 51 Barb. 257.

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to the ownership of property, originating in the feudal ages, for the existence of which the reason does not now exist or is not discernible, and yet courts are not authorized to disregard them on that account. They must remain until the legislature abrogates or changes them, like statutes founded upon no reason or upon reasons which have ceased to operate.[28]

§ 166. Suspension of state statute by federal enactment.—There are many matters upon which Congress may legislate, but as to which the legislature of the state may also enact laws until Congress has seen fit to exercise its power. Congress may have paramount authority to legislate concerning a certain subject, but until it exercises such authority each state may pass its own regulations on the subject.[29] When, however, Congress has passed laws covering the subject, any state laws are suspended. They are not expunged from the statute books as nullities, but their operation is suspended so long as the federal act remains in force.[30] Should the federal act be repealed or modified, the state act might again become effective.[31] Thus, the passage of the National Bankruptcy Act automatically suspended state insolvency statutes.[32] So, too, the "Pilotage Act" of 1853 was suspended by the act of Congress of 1866 regulating pilotage, but the federal act was modified in 1867 so that it would not affect certain state regulations; and thereupon the state law again became effective.[33] And federal legislation limiting the number of hours within which certain railroad employees engaged in interstate commerce shall work, superseded the state regulation on the subject.[34] The effect of the suspension, however, is not the same as the effect of a repeal by the legislature. In the latter case the statute is wiped out as though it never existed and all pending proceedings based on the statute fall within it unless there is some saving provision.[35] But, when a statute is rendered ineffective by a federal enactment covering the same subject, pending

28. Bertles v. Nunan, 92 N. Y. 152, 44 Am. Rep. 361.
29. People v. Welch, 141 N. Y. 266, 36 N. E. 328, 38 A. S. R. 793, 24 L. R. A. 117, permitting states to legislate as to common law crimes on navigable waters.
30. Sturgis v. Spofford, 45 N. Y. 446.
31. Henderson v. Spofford, 59 N. Y 131.
32. Sturges v. Crowninshield, 4 Wheat. 122, 4 U. S. (L. ed.) 529; Ogden v. Saunders, 12 Wheat. 213, 6 U. S. (L. ed.) 606.
33. Pilots v. Pacific Mail Steamship Co., 52 N. Y. 609; Henderson v. Spofford, 59 N. Y. 131.
34. People v. New York Cent., etc. R. Co., 163 App. Div. 79, 148 N. Y Supp. 495.
35. See infra, § 180.

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proceedings thereunder may continue, though they are not expressly saved by the federal act.[36]

§ 167. **Subsequent legislative recognition of repealed act.**— When a statute is amended "to read as follows" and contains the entire statute as amended it matters little whether or not the original statute was an effective enactment. In other words, if there is a positive re-enactment of a former statute, with such changes as the legislature sees fit to make, and it is manifest from the act itself that it is the intent of the legislature that the act as thus passed shall become the law of the state, the act is valid, although it purports to amend a law which might otherwise have been regarded as repealed.[37] A law thus explicit and complete may not be disregarded or invalidated because of a possible mistake of the legislature with respect to the existence of the statute which it purports to amend or re-enact. It is the enactment of a law, in any view.[38] And when it is claimed that a statute has been repealed by implication, if it can be shown that the legislature has referred to the statute or recognized it as an act constituting a part of the law of the state, such practical construction by the legislature furnishes a strong reason for holding that the statute has not been so repealed.[39] But the Consolidated Laws of 1909 were designed to make no change in the law of the state, and the re-enactment in such laws of a prior statute which had been repealed by implication does not revive it.[40]

§ 168. **Effect of unconstitutional amendment or repeal.**— If a statute purporting to amend an existing law is declared unconstitutional and void, the earlier statute stands as if no amendment had ever been passed.[41] Thus, when a statute is amended "to read as follows," if the amendment is unconstitutional, the original act remains in force.[42] So, too, an attempt to repeal an act

36. Sturgis v. Spofford, 45 N. Y. 446.

37. White v. Inebriates' Home, 141 N. Y. 123, 35 N. E. 1092; People v. County Canvassers, 143 N. Y. 84, 37 N. E. 649; People v. Upson, 79 Hun 87, 29 N. Y. Supp. 615, 61 N. Y. St. Rep. 158, affirmed on opinion below 147 N. Y. 716 mem., 42 N. E. 725.

38. People v. County Canvassers, 143 N. Y. 84, 37 N. E. 649.

39. Burnham v. Onderdonk, 41 N. Y. 425; Lefevre v. Lefevre, 59 N. Y. 434; O'Gorman v. New York, 67 N. Y. 486; People v. Morrison, 78 N. Y. 84; Whipple v. Christian, 80 N. Y. 523; Carroll v. McArdle, 216 N. Y. 232, 110 N. E. 446; Lewis v. Syracuse, 13 App. Div. 587, 43 N. Y. Supp. 455. And see supra, § 107, as to practical legislative constructions.

40. See Laws 1909, ch. 596, p. 1797. And see Contractors' Supply Co. v. New York, 153 App. Div. 60, 138 N. Y. Supp. 242; Betts v. New York, 73 Misc. 503, 132 N. Y. Supp. 448.

41. Markland v. Skully, 203 N. Y. 158, 96 N. E. 427; Matter of Daniels, 74 Misc. 485, 131 N. Y. Supp. 651.

42. People v. Mensching, 187 N. Y.

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by an unconstitutional exercise of legislative power must result in failure, for no repeal is thereby effected.[43] A statute is never repealed by implication, when a provision of a later act which otherwise would effect a repeal is unconstitutional.[44] If the unconstitutional statute contains a general repealing clause relative to inconsistent legislation, its effect is limited to the parts inconsistent with the constitutional parts of the statute; it has no effect on those parts which are inconsistent with only the unconstitutional parts.[45]

§ 169. Revival by repeal of repealing act.— It was an ancient rule, in force until within the last few years, that, when a statute was repealed, and thereafter the repealing statute was itself repealed, the first act again came into force, and it was thought immaterial whether either repeal was express or by implication.[46] Blackstone states the rule as follows: "If a statute that repeals another, is itself repealed afterwards, the first statute is hereby revived, without any formal words for that purpose."[47] The doctrine, like other rules in the interpretation and effect of statutes, was based on the presumed intent of the legislature. It was thought that the lawmakers, when they effected the second repeal, intended thereby to revive the original law, unless they indicated a contrary intent.[48] In the case, however, of statutes which constituted re-enactments of earlier statutes, the earlier were deemed

8, 79 N. E. 884, 10 Ann. Cas. 101, 10 L. R. A. (N. S.) 625.

43. People v. Schiellein, 95 N. Y. 124.

44. People v. McKinney, 52 N. Y. 374; People v. Mensching, 187 N. Y. 8, 79 N. E. 884, 10 Ann. Cas. 101, 10 L. R. A. (N. S.) 625; Matter of Cullinan, 97 App. Div. 122, 89 N. Y. Supp. 683; People v. Tiphaine, 3 Park. Crim. 241, 13 How. Pr. 74.

45. Harbeck v. New York, 10 Bosw. 366, affirmed 36 N. Y. 449; People v. Tiphaine, 13 How. Pr. 74, 3 Park. Crim. 241.

46. Van Denburgh v. Greenbush, 66 N. Y. 1; People v. Montgomery County, 67 N. Y. 109, 23 Am. Rep. 94; People v. Wilmerding, 136 N. Y. 363, 32 N. E. 1099; Chard v. Holt, 136 N. Y. 30, 32 N. E. 740; People v. Scannel, 62 App. Div. 249, 70 N. Y. Supp. 983; Ottman v. Hoffman, 7 Misc. 714, 28 N. Y. Supp. 28, 58 N. Y. St. Rep. 320; Matter of Sweeley, 12 Misc. 174, 33 N. Y. Supp. 369, affirmed without opinion, 146 N. Y. 401, 42 N. E. 543; People v. Steuben County, 41 Misc. 590, 85 N. Y. Supp. 244, affirmed 93 App. Div. 604, 87 N. Y. Supp. 1144, 183 N. Y. 114, 75 N. E. 1108; Churchill v. Marsh, 2 Abb. Pr. 219, 4 E. D. Smith 369; Sarsfield v. Van Vaughner, 14 Abb. Pr. 297; Merchants' Bank v. Spalding, 12 Barb. 302; People v. Davis, 61 Barb. 456; Wheeler v. Roberts, 7 Cow. 536; Gale v. Mead, 4 Hill 109; People v. Dikeman, 7 How. Pr. 124; Rome v. Knox, 14 How. Pr. 268; People v. Beers, 67 How. Pr. 219; Schwab v. People, 4 Hun 520; People v. Tiphaine, 3 Park. Crim. 241, 13 How. Pr. 74. Conversely, if the original act is re-enacted, the repealing act is thereby impliedly repealed. Churchill v. Marsh, 2 Abb. Pr. 219, 4 E. D. Smith 369.

47. Blackstone's Com. bk. 1, p. 90.

48. Van Denburgh v. Greenbush, 66 N. Y. 1.

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merged in the later acts, so that upon the repeal of the latter, both statutes were wiped out. This was presumed to be the legislative intent in such cases.[49] But the common law doctrine was abrogated by statute in 1892.[50] In that year section 31 of the Statutory Construction Law enacted, in part, as follows: "The repeal hereafter or by this chapter of any provision of a statute, which repeals any provision of a prior statute, does not revive such prior provision." This statutory rule was carried into the Consolidated Laws of 1909, and now constitutes section 90 of the General Construction Law.

Implied Repeals

§ 170. General rule.— Whether one statute repeals another is largely a question of legislative intent.[51] The lawmakers may indicate this intent by expressly stating that a designated prior statute is repealed.[52] But this practice is not essential to effect the repeal. The latest constitutional declaration by the legislature constitutes the law, and, though the act contains no express repealing clause, all prior acts are thereby impliedly repealed so far as they are in conflict.[53] But it is reasonable to presume that, if the legislature intended such an important result as the repeal of a prior statute, such intent would have been expressed in plain words and not left to implication.[54] It is easy to state in express language that a certain prior statute is repealed.[55] Hence, repeals by implication are not favored by the courts; and, as a general rule, a statute is not deemed to repeal an earlier one without express words of repeal, unless the two are in such conflict that both cannot be given effect.[56] And the fact that there exists a

49. See supra, § 118.

50. The statute has been held to apply to repeals contained in general laws passed at the same session. People ex rel. Conine v. Steuben County, 41 Misc. 590, 85 N. Y. Supp. 244, affirmed, 93 App. Div. 604, 87 N. Y. Supp. 1144, 183 N. Y. 114, 75 N. E. 1108. But a contrary conclusion was reached when the repealing act was enacted prior to the General Construction Law. Ottman v. Hoffman, 7 Misc. 714, 28 N. Y. Supp. 28, 58 N. Y. St. Rep. 320.

51. See infra, § 171.

52. See supra, § 162.

53. See infra, § 177.

54. Matter of Spring Valley Swamp, 66 Misc. 206, 123 N. Y. Supp. 269; People v. Meyers, 71 Misc. 77, 129 N. Y. Supp. 1099; Heppenstall v. Baudouine, 73 Misc. 118, 132 N. Y. Supp. 511.

55. "The repeal of a statute by implication is not favored by law, for when the legislature intends to repeal an act it usually says so expressly." In re Tiffany, 179 N. Y. 455, 72 N. E. 512.

56. People v. Keeler, 17 N. Y. 370; Mount v. Mitchell, 31 N. Y. 356; Birmingham Iron Foundry v. Hatfield, 43 N. Y. 234; In re Central Park, 50 N. Y. 493; People v. Palmer, 52 N. Y. 83; Anderson v. Van Tassel, 53 N. Y. 631; Mongeon v. People, 55 N. Y. 613; People v. Quigg, 59 N. Y. 83; Wallace v. Swinton, 64 N. Y. 188;

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conflict between two acts does not necessitate a repeal of the former act in its entirety; only those portions in unavoidable conflict

People v. Smith, 69 N. Y. 175; In re Cram, 69 N. Y. 452; People v. Westchester County, 73 N. Y. 173; Heckmann v. Pinkney, 81 N. Y. 211; Stranahan v. Sea View R. Co., 84 N. Y. 308; People v. Garr, 86 N. Y. 512; In re Curser, 89 N. Y. 401; People v. Crissey, 91 N. Y. 616; People v. Gallagher, 93 N. Y. 438, 45 Am. Rep. 232; Mark v. State, 97 N. Y. 572; People v. Jaehne, 103 N. Y. 182, 8 N. E. 374; People v. St. Lawrence County, 103 N. Y. 541, 9 N. E. 311; Lyddy v. Long Island City, 104 N. Y. 218, 10 N. E. 155; In re Washington St., A., etc., R. Co., 115 N. Y. 442, 22 N. E. 356; People v. Harris, 123 N. Y. 70, 25 N. E. 317; Woods v. Madison County, 136 N. Y. 403, 32 N. E. 1011; In re Taylor, 150 N. Y. 242, 44 N. E. 790; In re Murray Hill Bank, 153 N. Y. 199, 47 N. E. 298; Davis v. Supreme Lodge, etc., 165 N. Y. 159, 58 N. E. 891; Bush v. Delaware, etc., R. Co., 166 N. Y. 210, 59 N. E. 838; People v. Thames, etc., Marine Ins. Co., 176 N. Y. 531, 68 N. E. 888; In re Tiffany, 179 N. Y. 455, 72 N. E. 512; In re Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994; Grimmer v. Tenement House Dept., 204 N. Y. 370, 97 N. E. 884; Peterson v. Martino, 210 N. Y. 412, 104 N. E. 916; People v. Dwyer, 215 N. Y. 46, 109 N. E. 103; Matter of Taylor, 3 App. Div. 244, 38 N. Y. Supp. 348, affirmed 150 N. Y. 242, 44 N. E. 790; People v. Koenig, 9 App. Div. 436, 41 N. Y. Supp. 283; People v. Young, 18 App. Div. 162, 45 N. Y. Supp. 772, 79 N. Y. St. Rep. 772; People v. House of Refuge, 22 App. Div. 254, 47 N. Y. Supp. 767; Irvine v. Atlantic Ave. R. Co., 23 App. Div 112, 48 N. Y. Supp. 465; Wick v. Ft. Plain, etc., R. Co., 27 App. Div. 577, 50 N. Y. Supp. 479; Keyes v. New York, 40 App. Div. 409, 57 N. Y. Supp. 1047, affirmed 165 N. Y. 654, 59 N. E. 1124; People v. Fuller, 41 App. Div. 404, 58 N. Y. Supp. 835; People v. Maxwell, 50 App. Div. 538, 64 N. Y. Supp. 96, affirmed 163 N. Y. 599, 57 N. E. 1120; People v. Coler, 65 App. Div. 217, 72 N. Y. Supp. 564; Quinn v. New York, 68 App. Div. 175, 74 N. Y. Supp. 89; Slater v. Slater, 78 App. Div. 449, 80 N. Y. Supp. 363; People v. Wells, 94 App. Div. 271, 87 N. Y. Supp. 1107; Orange County v. Ellsworth, 98 App. Div. 275, 90 N. Y. Supp. 576; Welstead v. Jennings, 104 App. Div. 179, 93 N. Y. Supp. 339; People v. Metz, 119 App. Div. 271, 104 N. Y. Supp. 649, affirmed without opinion 186 N. Y. 550, 82 N. E. 1131; In re New York, 125 App. Div. 219, 109 N. Y. Supp. 652, affirmed without opinion 192 N. Y. 569, 85 N. E. 1117; People v. Tax Com'rs, 126 App. Div. 610, 110 N. Y. Supp. 577, affirmed without opinion 195 N. Y. 618, 89 N. E. 1109; People v. Schultz, 149 App. Div. 844, 134 N. Y. Supp. 293, affirmed without opinion 206 N. Y. 627, 99 N. E. 1114; New York, etc., R. Co. v. Port Chester, 149 App. Div. 893, 134 N. Y. Supp. 883, affirmed without opinion 210 N. Y. 600, 104 N. E. 1135; Brooklyn Children's Aid Soc. v. Prendergast, 166 App. Div. 852, 151 N. Y. Supp. 720; Burkard v. Smith, 19 Misc. 31, 42 N. Y. Supp. 638; Ruge v. Gallagher, 22 Misc. 572, 49 N. Y. Supp. 729; Doll v. Devery, 27 Misc. 149, 57 N. Y. Supp. 767; People v. McDonough, 28 Misc. 652, 60 N. Y. Supp. 45; Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489; O'Connor v. New York, 51 Misc. 560, 101 N. Y. Supp. 295; Matter of Spring Valley Swamp, 66 Misc. 206, 123 N. Y. Supp. 269; Waldo v. Christman, 72 Misc. 349, 130 N. Y. Supp. 260; Heppenstall v. Baudouine, 73 Misc. 118, 132 N. Y. Supp. 511; People v. Roman Catholic House, etc., 77 Misc. 482, 136 N. Y. Supp. 617; Hammitt v. Gaynor, 82 Misc. 196, 144 N. Y. Supp. 127; Depew v. Lehigh Val. R. Co., 85 Misc. 71, 148 N. Y. Supp. 265; McBride v. Ashley, 91 Misc. 585, 154 N. Y. Supp. 1010; Mundy v. Excise Com'rs, 9 Abb. N. Cas. 117; Williams v. Potter, 2 Barb. 316; Hayes v. Symonds, 9 Barb. 260; Van Rensselaer v. Snyder, 9 Barb. 302, affirmed 13 N. Y. 299; Bell v. Yates, 33 Barb. 627; Wallace v. Bassett, 41 Barb. 92; Matter of Curser, 2 Civ. Pro. 411; Weiler v. Nembach, 13 Civ. Pro. 380; McCartee v. Orphan Asylum Soc., 9 Cow. 437, 18 Am. Dec 516; New York v. Buel, 12 Daly 494; Palmer v. Conly, 4 Denio 374, affirmed 2 N. Y. 182; New York v. Walker, 4 E. D. Smith 258; People v. Deming, 1 Hilt. 271, 13 How. Pr. 441; Cohoes v. Moran, 25 How. Pr. 385; New York, etc., R. Co. v. Delaware County, 67 How. Pr. 5; Spratt v. Huntington, 2 Hun 341; O'Rourke v. People, 3 Hun 225; Mullaly v. New York, 3 Hun

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with the later act are deemed repealed.[57] One reason for the disfavor which repeals by implication have encountered is that they carry a tacit reflection upon the legislators that they ignorantly made one act repugnant to and inconsistent with a prior law.[58] It is only when there is an irreconcilable conflict between the acts[59] or when the subsequent act is clearly intended to supersede the former statute,[60] that a repeal by implication arises.[61] When, by a fair construction, some office or function can be assigned to both acts, and they confer different powers to be exercised for different purposes, both must stand, though they

661; Whipple v. Christian, 15 Hun 321; Angel v. Hume, 17 Hun 374; Wickham v. Wickham, 20 Hun 239; People v. Dutcher, 20 Hun 241; Syracuse Sav. Bank v. Seneca Falls, 21 Hun 304, affirmed 86 N. Y. 317; In re Walter, 21 Hun 533; People v. Carr, 25 Hun 325; Ross v. Wigg, 36 Hun 107, affirmed 101 N. Y. 640; Harlem Bridge, etc., R. Co. v. Southern Boulevard R. Co., 41 Hun 553, 3 N. Y. St. Rep. 316; Armbruster v. Wilson, 43 Hun 261, 4 N. Y. St. Rep. 351; White v. Wood, 49 Hun 381, 2 N. Y. Supp. 673; People v. French, 51 Hun 641, 4 N. Y. Supp. 172; Aldinger v. Pugh, 57 Hun 181, 10 N. Y. Supp. 684; Kilbourne v. Sullivan County, 62 Hun 210, 16 N. Y. Supp. 507, 41 N. Y. St. Rep. 838, affirmed 137 N. Y. 170, 33 N. E. 159; Eagan v. Rochester, 68 Hun 331, 22 N. Y. Supp. 955; People v. Board of Canvassers, 77 Hun 372, 28 N. Y. Supp. 871, affirmed 143 N. Y. 84, 37 N. E. 649; Buffalo v. Neal, 86 Hun 76, 33 N. Y. Supp. 346; People v. Madill, 91 Hun 152, 36 N. Y. Supp. 1130; Chamberlain v. Chamberlain, 3 Lans. 348; People v. Burleigh, 1 N. Y. Crim. 522; Allen v. Reynolds, 36 Super. Ct. 297; Pursell v. New York Life Ins., etc., Co., 10 Super. Ct. 383; People v. Sheridan, 48 Hun 620 mem., 1 N. Y. Supp. 61, 15 N. Y. St. Rep. 938; Bergman v. Wolff, 11 N. Y. Supp. 591, 33 N. Y. St. Rep. 499; Ackerson v. Niagara County, 18 N. Y. Supp. 219, 45 N. Y. St. Rep. 173, affirmed 72 Hun 616, 25 N. Y. Supp. 196, 55 N. Y. St. Rep. 277; People v. Board of Canvassers, 77 Hun 372, 28 N. Y. Supp. 871; People v. England, 16 App. Div. 97, 45 N. Y. Supp. 12; People v. Young, 18 App. Div. 162, 45 N. Y. Supp. 772; People v. McDonough, 28 Misc. 652, 60 N. Y. Supp. 45; Czamowsky v. Rochester, 55 App. Div. 388, 66 N. Y. Supp. 931; Trust Co. of America v. State Safe Deposit Co., 109 App. Div. 665, 96 N. Y. Supp. 585; Matter of Business Men's Assoc., 54 Misc. 13, 103 N. Y. Supp. 843; People v. Metz, 119 App. Div. 271, 104 N. Y. Supp. 649; Matter of Hanover, 3 Redf. 91; People v. Mallory, 2 Thomp. & C. 76, 46 How. Pr. 281; In re Curser, 15 N. Y. Wkly. Dig. 20; New York v. Buell, 19 N. Y. Wkly. Dig. 446.

57. Hankins v. New York, 64 N. Y. 18; Bush v. Delaware, etc., R. Co., 166 N. Y. 210, 59 N. E. 838; Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489; Heckmann v. Pinkney, 6 Abb. N. Cas. 371; Czamowsky v. Rochester, 55 App. Div. 388, 66 N. Y. Supp. 931. Even an express repeal of one clause of a statute does not repeal the entire act; on the contrary, in legal construction, it confirms the other clauses. People v. Barker, 2 Wheel Crim. 19.

58. Gabel v. Williams, 39 Misc. 489, 80 N. Y. Supp. 489; Czamowsky v. Rochester, 55 App. Div. 388, 66 N. Y. Supp. 931.

59. McCartee v. Orphan Asylum Soc., 9 Cow. 437, 18 Am. Dec. 516. See infra, § 177.

60. See infra, § 178.

61. In re Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994; People v. Dwyer, 215 N. Y. 46, 109 N. E. 103; People v. Koenig, 9 App. Div. 436, 41 N. Y. Supp. 283; People v. Metz, 119 App. Div. 271, 104 N. Y. Supp. 649, affirmed without opinion 189 N. Y. 550, 82 N. E. 1131; Matter of New York, 125 App. Div. 219, 109 N. Y. Supp. 652, affirmed without opinion 192 N. Y. 569, 85 N. E. 1117; People v. Schultz, 149 App. Div. 844, 134 N. Y. Supp. 293, affirmed without opinion 206 N. Y. 627, 99 N. E. 1114; People v. Brady, 26 Misc. 82, 56 N. Y. Supp. 567; Heppenstall v. Baudouine,

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were designed to operate upon the same general subject.[62] In the absence of words of express repeal, it is only in an exceptional case that a repeal would be effected as between two statutes relating to different subjects.[63]

§ 171. As a question of legislative intent.— The question whether one statute repeals an earlier one depends, like other questions in the interpretation of statutes,[64] on the legislative intent.[65] If the language of a statute, construed in the light of the canons of interpretation and of the surrounding circumstances, indicates that it was intended to annul the provisions of a former law, it will have that effect though there is no express repealing clause.[66] Where there is a clear repugnancy[67] or express repeal,[68] no room is left for inquiry into the intent of the legislature.[69] If, on the other hand, the intent is doubtful, or if it is clear that the former statute was intended to retain its force, the courts will save it from repeal.[70] An intent

73 Misc. 118, 132 N. Y. Supp. 511; Bell v. Yates, 33 Barb. 627; Loomis v. Loomis, 51 Barb. 257; Bowen v. Lease, 5 Hill 221; White v. Wood, 49 Hun 381, 2 N. Y. Supp. 673; Aldinger v. Pugh, 57 Hun 181, 10 N. Y. Supp. 684; Bergman v. Wolff, 11 N. Y. Supp. 591; Finkel v. Kohn, 38 App. Div. 199, 56 N. Y. Supp. 569.

62. Wiles v. Peck, 26 N. Y. 42; In re Evergreens, 47 N. Y. 216; Hankins v. New York, 64 N. Y. 18; In re Curser, 89 N. Y. 401; Wood v. Madison County, 136 N. Y. 403, 32 N. E. 1011; In re Taylor, 150 N. Y. 242, 44 N. E. 790; In re Tiffany, 179 N. Y. 455, 72 N. E. 512; In re Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994; Keyes v. New York, 40 App. Div. 409, 57 N. Y. Supp. 1047, affirmed, 165 N. Y. 654, 59 N. E. 1124; Rhall v. Board of Education, 40 App. Div. 412, 57 N. Y. Supp. 977; Matter of New York, 125 App. Div. 219, 109 N. Y. Supp. 652, affirmed without opinion, 192 N. Y. 569, 85 N. E. 1117; Lenhard v. Lynch, 62 How. Pr. 56; Excise Com'rs v. Willey, 2 Lans. 427; Gillin v. Canary, 19 Misc. 594, 44 N. Y. Supp. 313; Orange County v. Ellsworth, 98 App. Div. 275, 90 N. Y. Supp. 576; People v. Kelly, 7 Robt. 592.

63. In re Central Park Com'rs, 50 N. Y. 493; Casterton v. Vienna, 163 N. Y. 368, 57 N. E. 622; Davis v. Supreme Lodge, etc., 165 N. Y. 159, 58 N. E. 891.

64. As to the general proposition that intent is the primary consideration, see supra, § 52.

65. Mongeon v. People, 55 N. Y. 613; O'Gorman v. New York, 67 N. Y. 486; Anderson v. Anderson, 112 N. Y. 104, 19 N. E. 427, 2 L. R. A. 175; Quinlan v. Welch, 141 N. Y. 158, 36 N. E. 12; Stack v. Brooklyn, 150 N. Y. 335, 44 N. E. 1030; People v. Dalton, 158 N. Y. 175, 52 N. E. 1113; People v. Dwyer, 215 N. Y. 46, 109 N. E. 103; Brooklyn Children's Aid Soc. v. Prendergast, 166 App. Div. 852, 151 N. Y. Supp. 720; Matter of New York, 168 App. Div. 6, 153 N. Y. Supp. 747; People v. Cleary, 13 Misc. 546, 35 N. Y. Supp. 588, 70 N. Y. St. Rep. 209; People v. Martin, 20 N. Y. Supp. 585, 48 N. Y. St. Rep. 288; People v. Cleary, 13 Misc. 546, 35 N. Y. Supp. 588. Enactments subsequent to the alleged repealing act may elucidate the intent of the legislature as to the effect of such repealing act. People v. Smith, 69 N. Y. 175. And see also, supra, § 69, as to subsequent acts in pari materia.

66. In re Washington St., A., etc., R. Co., 115 N. Y. 442, 22 N. E. 356; People v. Thames, etc., Marine Ins. Co., 176 N. Y. 531, 68 N. E. 888; Walsh v. Buffalo, 92 Hun 438, 36 N. Y. Supp. 997.

67. See infra, § 177.

68. See supra, § 162.

69. Canastota, etc., Plank Road Co. v. Parkill, 50 Barb. 601.

70. New York, etc., R. Co. v. Delaware County, 67 How. Pr. 5; Hankins

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should never be implied which is contrary to an expressed intent.[71] Thus, it is difficult to sustain an implied repeal where the later act expressly recognizes and saves the force of the earlier,[72] or expressly declares that it is supplementary to the earlier.[73] The legislature is not lightly to be charged with an intent of changing an established policy or an established system of law with reference to some subject; and, when such would be the effect of an implied repeal, it is to be avoided by all legitimate aids of construction.[74] But, where a statute provides for extensive and important matters which will be frustrated or impeded by an adherence to the provisions of the earlier statute, the later will be deemed to have effected an implied repeal.[75] An affirmative act of the same import as a repealed statute is said to constitute a repeal of the repealing act; that is, if a statute which has been repealed is afterwards repealed, the repealing statute becomes of no force.[76] This doctrine is in line with the common law rule that the repeal of a repealing statute constitutes a revival of the repealed act.[77]

§ 172. Laws passed at same session of legislature.— While it is within the power of the lawmakers to repeal a law immediately after its enactment, it is not the usual practice to pass a repealing act at the same session of the legislature. And, should the legislature intend to repeal an act passed during the same session, it is reasonable to suppose that such intent would not be left to implication. The presumption is strong that the legislature would not repeal an act which is fresh in their minds, without making an express reference to it.[78] Thus, the general rule that repeals by implication are not favored, applies with peculiar force as between two statutes passed at the same session of the

v. New York, 64 N. Y. 18; People v. Dwyer, 215 N. Y. 46, 109 N. E. 103; People v. Brady, 26 Misc. 82, 56 N. Y. Supp. 567. And see the cases cited in the preceding paragraph.

71. People v. Harris, 123 N. Y. 70, 25 N. E. 317.

72. People v. Board of Police, etc., 59 N. Y. 92; People v. Smith, 69 N. Y. 175; People v. Meyers, 71 Misc. 77, 129 N. Y. Supp. 1099; People v. Goodwin, 50 Barb. 562.

73. People v. Harris, 54 Hun 638, 7 N. Y. Supp. 773, affirmed 123 N. Y. 70, 25 N. E. 317.

74. In re Cram, 69 N. Y. 452; Hayes v. Symonds, 9 Barb. 260; Sprat v. Huntington, 2 Hun 341; People v. Ontario County, 17 Hun 501.

75. In re Walter, 21 Hun 533, affirmed 83 N. Y. 538.

76. Churchill v. Marsh, 4 E. D. Smith 369.

77. See supra, § 169.

78. Matter of Wheelock, 51 Hun 640 mem., 3 N. Y. Supp. 890. The presumption is weakened in the case of two statutes in the course of preparation at the same time by independent hands and passed practically at the same time. Rusher v. Morris, 9 How. Pr. 266.

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legislature.[79] Moreover, the presumption against a repeal by implication of a prior act passed at the same session is fortified, so far as the effect of the consolidated laws is concerned, by section 100 of the General Construction Law.[80] In the case of two statutes passed in the same year, the courts will give them such construction as will make both effective.[81] If, however, the two acts cannot be harmonized so as to give effect to each, the later statute must control as expressing the later judgment of the legislature, and the earlier act will be repealed to the extent of the repugnancy between the statutes.[82] Indeed, if the latter part of a statute is repugnant to a former part of the same statute, the latter portion may be deemed controlling as the latest expression of legislative intent.[83] As between two inconsistent enactments approved on the same day, in the absence of evidence to the contrary, the one with the highest number is presumed to have been enacted subsequent to the other.[84]

§ 173. Effect of general repealing clause.— It is frequent legislative practice to insert in a statute a clause to the effect that all inconsistent legislation is thereby repealed. But inconsistent legislation necessarily must bow to the latest expression of legislative intent,[85] and hence such a clause has slight, if any, practical effect.[86] If placed in a general act, it will not effect the repeal of special acts which would not otherwise be deemed repealed.[87] And, similarly, if put in a special enactment, it will not control the question whether a general act on the same subject is affected.[88] So, too, when it is a part of an unconstitutional enactment, prior statutes in conflict with the void part of

79. Powers v. Shepard, 48 N. Y. 540; People v. New York, etc., R. Co., 85 Misc. 482, 147 N. Y. Supp. 789, reversed on other grounds, 163 App. Div. 79, 148 N. Y. Supp. 495; People v. French, 51 Hun 345, 4 N. Y. Supp. 347; Matter of Wheelock, 51 Hun 640 mem., 3 N. Y. Supp. 890

80. See infra, § 179.

81. People v. Lyon, 77 Misc. 377, 136 N. Y. Supp. 534, affirmed 154 App. Div. 266, 138 N. Y. Supp. 973; People v. New York, etc., R. Co., 85 Misc, 482, 147 N. Y. Supp. 789, reversed on other grounds, 163 App. Div. 79, 148 N. Y. Supp. 495.

82. People v. Lyon, 77 Misc. 377, 136 N. Y. Supp. 534, affirmed 154 App. Div. 266, 138 N. Y. Supp. 973.

83. See supra, § 60.

84. Ottman v. Hoffman, 7 Misc. 714, 28 N. Y. Supp. 28, 58 N. Y. St. Rep. 320. See also Board of Health v. Schmades, 10 Abb. Pr. (N. S.) 205, 3 Daly 282. And see supra, § 46, as to when a bill becomes a law.

85. See infra, § 177.

86. People v. Brinkerhoff, 68 N. Y. 259; Harrington v. Rochester, 10 Wend. 547.

87. Whipple v. Christian, 80 N. Y. 523; People v. Webster, 8 Misc. 133, 28 N. Y. Supp. 646, 60 N. Y. St. Rep. 149; Aldinger v. Pugh, 57 Hun 181, 10 N. Y. S. 684. And see infra, § 175, as to the implied repeal of a special act by a subsequent general law.

88. People v. Craig, 60 Misc. 300, 111 N. Y. Supp. 909, affirmed without

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the enactment are not thereby repealed.[89] Its chief function seems to be to satisfy the conscience of the drafter, for it is said to be put in "by way of caution."[90] If operative at all, it operates on other statutes or parts thereof; it will not effect the repeal of a clause of the statute of which it is a part.[91] But, when it is provided that an earlier act shall be construed as a part of a later statute, except where they are inconsistent, the clause has some influence in determining the parts of the old act which are repealed. In such a case the general rule which disfavors implied repeals receives exceptional force.[92]

§ 174. Cumulative or auxiliary statutes.—An affirmative statute which provides a new remedy for a pre-existing remedy does not abrogate a former common law remedy for the enforcement of such right; on the contrary, a party may avail himself of either the common law remedy or the statutory remedy.[93] The general doctrine of this rule is applicable when a new statutory remedy is given for the protection of some right for which there already exists a statutory remedy. In the absence of something to indicate a contrary intention, the prior statutory remedy remains in force and resort may be had to either.[94] For example, it is a fundamental principle that a statute conferring jurisdiction in certain cases on one court does not oust other courts of jurisdiction in such cases.[95] So, too, the amendment in 1908 of section 1391 of the Code of Civil Procedure authorizing the garnishment of trust incomes has been held not to repeal by implication section 98 of the Real Property Law authorizing an action to reach surplus trust income.[96] Similarly, it has been held that the Home Rule Bill of 1913 granted powers in addition to, not in substitution of, powers conferred by city charters.[97] And the provisions of the General Business Law, prohibiting the attempt to create a monopoly, do not repeal the provisions of the Penal

opinion 128 App. Div. 908, 112 N. Y. Supp. 1142; People v. Edwards, 56 Hun 377, 10 N. Y. Supp. 335.

89. Harbeck v. New York, 10 Bosw. 366, affirmed 36 N. Y. 449. And see also, supra, § 168.

90. People v. Craig, 60 Misc. 300, 111 N. Y. Supp. 909, affirmed without opinion 128 App. Div. 908, 112 N. Y. Supp. 1142; Harrington v. Rochester, 10 Wend. 547.

91. Vinson v. Sewer, etc., Commission, 158 App. Div. 132, 142 N. Y. Supp. 598.

92. People v. Smith, 69 N. Y. 175.

93. See supra, § 4.

94. Burnham v. Onderdonk, 41 N Y. 425; Tremain v. Richardson, 68 N. Y. 617; Heppenstall v. Baudouine, 73 Misc. 118, 132 N. Y. Supp. 511.

95. Matter of Cary, 77 Misc. 602, 138 N. Y. Supp. 682.

96. Heppenstall v. Baudouine, 73 Misc. 118, 132 N. Y. Supp. 511.

97. Gibbs v. Luther, 81 Misc. 611, 143 N. Y. Supp. 90, affirmed 158 App Div. 951, 143 N. Y. Supp. 1118.

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Law relative to conspiracies injurious to trade.[98] So, too, provisions of the city charter of Yonkers, requiring the filing of notices of mechanic's liens in the office of the city clerk, have been held not a substitute for the provisions in the Lien Law, but are supplementary thereto and require an additional filing.[99]

§ 175. Repeal of special law by general act.— It is a general rule that a private or local statute is not deemed repealed by a general act, unless it is clearly the legislative intent to effect such repeal.[1] Ordinarily, an express repeal by some intelligible

98. People v. Dwyer, 160 App. Div. 542, 145 N. Y. Supp. 748.

99. Tommasi v. Archibald, 114 App. Div. 838, 100 N. Y. Supp. 367.

1. Williams v. Williams, 8 N. Y. 525; People v. Quigg, 59 N. Y. 83; Lefevre v. Lefevre, 59 N. Y. 434; Van Denburgh v. Greenbush, 86 N. Y. 1; People v. Brinkerhoff, 68 N. Y. 259; In re Delaware, etc., Canal Co., 69 N. Y. 209; Gloversville v. Howell, 70 N. Y. 287; People v. Westchester County, 73 N. Y. 173; Whipple v. Christian, 80 N. Y. 523; McKenna v. Edmundstone, 91 N. Y. 231; People v. New York Catholic Protectory, 101 N. Y. 195, 4 N. E. 177; Graf v. Cunningham, 109 N. Y. 369, 16 N. E. 551; Weiler v. Nembach, 114 N. Y. 36, 20 N. E. 623; James v. Sammis, 132 N. Y. 239, 30 N. E. 502; Coxe v. State, 144 N. Y. 396, 39 N. E. 400; People v. Keller, 157 N. Y. 90, 51 N. E. 431; Casterton v. Vienna, 163 N. Y. 368, 57 N. E. 622; People v. Raymond, 194 N. Y. 189, 87 N. E. 90; Fulton v. Krull, 200 N. Y. 105, 93 N. E. 494; People v. Wilcox, 200 N. Y. 423, 94 N. E. 212; Peterson v. Martino, 210 N. Y. 412, 104 N. E. 916; Carroll v. McArdle, 216 N. Y. 232, 110 N. E. 446; People v. Waring, 1 App. Div. 594, 37 N. Y. Supp. 478, 73 N. Y. St. Rep. 222, affirmed 149 N. Y. 621, 44 N. E. 1127; People v. Dohling, 6 App. Div. 86, 39 N. Y. Supp. 765; Boechat v. Brown, 9 App. Div. 369, 41 N. Y. Supp. 467; Casterton v. Vienna, 17 App. Div. 94, 44 N. Y. Supp. 868, affirmed 163 N. Y. 368, 57 N. E. 622; People v. Barker, 22 App. Div. 161, 47 N. Y. Supp. 1020; Jones v. Tonawanda, 35 App. Div. 151, 55 N. Y. Supp. 115; People v. Keller, 35 App. Div. 493, 54 N. Y. S. 1011; People v. Coler, 38 App. Div. 604, 58 N. Y. Supp. 14; Matter of Reddish, 45 App. Div. 37, 60 N. Y. Supp. 1111; People v. O'Grady, 46 App. Div. 213, 61 N. Y. Supp. 577; Soloman v. Bennett, 62 App. Div. 56, 70 N. Y. Supp. 856; Welstead v. Jennings, 104 App. Div. 179, 93 N. Y. Supp. 339, affirmed without opinion, 185 N. Y. 588, 78 N. E. 1114; People v. Monroe County Court, 105 App. Div. 1, 93 N. Y. Supp. 452; Tommasi v. Archibald, 114 App. Div. 838, 100 N. Y. Supp. 367; Jamestown v. Home Tel. Co., 125 App. Div. 1, 109 N. Y. Supp. 297; People v. Penitentiary, 154 App. Div. 473, 139 N. Y. Supp. 212; Vinson v. Sewer, etc., Commission, 158 App. Div. 132, 142 N. Y. Supp. 598; Bath v. McBride, 163 App. Div. 714, 148 N. Y. 836, 840; People v. Webster, 8 Misc. 133, 28 N. Y. Supp. 646, 60 N. Y. St. Rep. 149; Stack v. Brooklyn, 9 Misc. 260, 29 N. Y. Supp. 743, 61 St. Rep. 319, affirmed 150 N. Y. 335, 44 N. E. 1030; People v. Baker, 12 Misc. 389, 34 N. Y. Supp. 49; Gillin v. Canary, 19 Misc. 594, 44 N. Y. Supp. 313, 4 Ann. Cas. 200, 78 N. Y. St. Rep. 313, 26 Civ. Pro. 230; Ruge v. Gallagher, 22 Misc. 572, 49 N. Y. Supp. 729; People v. Scully, 24 Misc. 412, 53 N. Y. Supp. 645; People v. Scannell, 25 Misc. 619, 56 N. Y. Supp. 117, affirmed 40 App. Div. 633, 58 N. Y. Supp. 1146, 160 N. Y. 103, 54 N. E. 670; Matter of Business Men's Assoc., 54 Misc. 13, 103 N. Y. Supp. 843; Lowman v. Billington, 65 Misc. 111, 119 N. Y. Supp. 825; People v. Maher, 92 Misc. 50, 155 N. Y. Supp. 279; People v. Baker, 10 Abb. N. Cas. 210; People v. Myers, 25 Abb. N. Cas. 368, 11 N. Y. Supp. 217, 33 N. Y. St. Rep. 18; People v. Bowen, 30 Barb. 24, 21 N. Y. 517; McLaughlin v. Page, 14 Daly 274; Spofford v. Southern Boulevard R. Co., 15 Daly 162, 4 N. Y. Supp. 388; People v. Burleigh, 1 N. Y. Crim. 522; People v. Coffee, 62 How. Pr. 445; New York, etc., R. Co. v. Delaware County, 67 How. Pr. 5; Deposit v. Vail, 5

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reference to the special act is necessary.[2] In other words, a special statute providing for a particular class of cases is not repealed by a subsequent statute general in its terms, provisions and application, unless the intent to repeal it is manifest, although the terms of the general act are broad enough to include the cases embraced in the special law."[3] The special law will be permitted to operate in the particular territory to which it is applicable or in the several cases which it covers.[4] The reason of the rule is, that it is presumed that there was some special or local reason why the specified subject or locality should be taken out of the operation of the general law, or, if there was no general law upon the subject or applicable to that locality, that there was some reason why a special instead of a general law should be passed, and that such reasons continue to exist unless the legislature clearly manifests in the subsequent general law that they do not continue.[5] In accord with the general rule, the provisions of special city[6] or

Hun 310; Church of Redemption v. Grace Church, 6 Hun 166; Whipple v. Christian, 15 Hun 321; Larkin v. Steele, 25 Hun 254; People v. Westchester County, 40 Hun 353; Buffalo Cemetery Assoc. v. Buffalo, 43 Hun 127, 5 N. Y. St. Rep. 394, affirmed 118 N. Y. 61, 22 N. E. 962; People v. Pierson, 59 Hun 450, 13 N. Y. Supp. 365; Matter of Brown, 60 Hun 98, 14 N. Y. Supp. 450; Matter of Street Opening, 74 Hun 561, 26 N. Y. Supp. 855; People v. County Canvassers, 77 Hun 372, 28 N. Y. Supp. 871; Reynolds v. Niagara Falls, 81 Hun 353, 30 N. Y. Supp. 954; Higgins v. Bell, 53 Hun 632, 6 N. Y. Supp. 105; People v. County Canvassers, 77 Hun 372, 28 N. Y. Supp. 874; Lewis v. Syracuse, 13 App. Div. 587, 43 N. Y. Supp. 455; People v. Keller, 31 App. Div. 248, 52 N. Y. Supp. 950; People v. Wells, 94 App. Div. 271, 87 N. Y. Supp. 1107; Rome v. Whitestown Waterworks Co., 113 App. Div. 547, 100 N. Y. Supp. 357; Nichols v. Mase, 13 N. Y. Wkly. Dig. 479; People v. Sheridan, 48 Hun 620 mem., 1 N. Y. Supp. 61, 28 N. Y. Wkly. Dig. 455, 15 N. Y. St. Rep. 938.

2. Aldinger v. Pugh, 57 Hun 181, 10 N. Y. Supp. 684; Jamestown v. Home Tel. Co., 125 App. Div. 1, 109 N. Y. Supp. 297; Mahon v. New York, 29 Misc. 251, 60 N. Y. Supp. 541, affirmed 52 App. Div. 631, 65 N. Y. Supp. 1139; People v. Quigg, 59 N. Y. 83.

3. Excelsior Petroleum Co. v. Lacey, 63 N. Y. 422; People v. Gold, etc., Tel. Co., 98 N. Y. 67; Buffalo Cemetery Assoc. v. Buffalo, 118 N. Y. 61, 22 N. E. 962; In re People, 146 N. Y. 357, 40 N. E. 988; Parker v. Elmira R. Co., 165 N. Y. 274, 59 N. E. 81; People v. Knox, 166 N. Y. 444, 60 N. E. 17, 54 L. R. A. 589; Grimmer v. Tenement House Dept., 204 N. Y. 370, 97 N. E. 884; Woodside Water Co. v. Long Island City, 23 App. Div. 78, 48 N. Y. Supp. 686; People v. Keller, 35 App. Div. 493, 54 N. Y. Supp. 1011; People v. Gulvin, 164 App. Div. 768, 149 N. Y. Supp. 117, 1105; Matter of McKay, 33 Misc. 520, 68 N. Y. Supp. 925; Bartels v. Cunningham, 8 Abb. N. Cas. 226; Matter of Wacher, 62 How. Pr. 352; Aldinger v. Pugh, 57 Hun 181, 10 N. Y. Supp. 684; Bergman v. Wolff, 11 N. Y. Supp. 591, 33 N. Y. St. Rep. 499; Buffalo v. Neal, 86 Hun 76, 33 N. Y. Supp. 346.

4. People v. Jaehne, 103 N. Y. 182, 8 N. E. 374; Poughkeepsie v. Quintard, 136 N. Y. 275, 32 N. E. 764; People v. Keller, 31 App. Div. 248, 52 N. Y. Supp. 950.

5. Matter of Reddish, 45 App. Div. 37, 60 N. Y. Supp. 1111, wherein it was stated that the rule was not applicable when general statutes of the state came into conflict with local statutes passed by a board of supervisors.

6. People v. Keller, 157 N. Y. 90, 51 N. E. 431; Boechat v. Brown, 9 App. Div. 369, 41 N. Y. Supp. 467; Lewis v. Syracuse, 13 App. Div. 587,

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village[7] charters generally remain in force despite subsequent enactments providing a different rule of general application. So, special acts for the organization of a certain private corporation will not generally be affected by subsequent legislation applying to corporations generally.[8] And especially is the presumption against the repeal of a special act, when the general act was enacted prior thereto but was amended subsequently. In such a case, the amended general act is thought applicable simply to the subjects which were governed by the original act.[9] But there is no rule of law which prohibits the repeal of a special act by a general one without the use of express words. The question whether a repeal has been made is always one of legislative intent.[10] If the statutes are so inconsistent that the prior special act cannot operate when the general act is given the fair construction required by its language, the former must be deemed abrogated. The inconsistency in such a case sufficiently indicates an intent to repeal the earlier statute.[11] And so, too, the intent to repeal a former special law may be shown when the legislature enacts a consolidating law designed to cover the whole subject and furnish the only rule on the subject. Such is the case of special tax laws which are deemed repealed by the General

43 N. Y. Supp. 455; Woodside Water Co. v. Long Island City, 23 App. Div. 78, 48 N. Y. Supp. 686; People v. Keller, 31 App. Div. 248, 52 N. Y. Supp. 950; People v. Coler, 31 App. Div. 523, 52 N. Y. Supp. 197, affirmed 157 N. Y. 676, 51 N. E. 1093; Tommasi v. Archibald, 114 App. Div. 838, 100 N. Y. Supp. 367; Jamestown v. Home Tel. Co., 125 App. Div. 1, 109 N. Y. Supp. 297; People v. Carson, 10 Misc. 237, 30 N. Y. Supp. 817; People v. Scannell, 25 Misc. 619, 56 N. Y. Supp. 117, affirmed 160 N. Y. 103, 54 N. E. 670; Davis v. Haffner, 2 Abb. Pr. 187; Reynolds v. Niagara Falls, 81 Hun 353, 30 N. Y. Supp. 954.

7. Deposit v. Vail, 5 Hun 310; Gloversville v. Howell, 7 Hun 345; Deposit v. Devereux, 8 Hun 317.

8. Chamberlain v. Chamberlain, 43 N. Y. 424; Parker v. Elmira R. Co., 165 N. Y. 274, 59 N. E. 81; Buffalo Cemetery Assoc. v. Buffalo, 43 Hun 127, affirmed 118 N. Y. 61, 22 N. E. 962; Matter of White, 118 App. Div. 869, 103 N. Y. Supp. 688. But a special corporate charter may be amended by a general act not referring specifically to the charter, when such is the intention of the legislature. New York Cent., etc., R. Co. v. Williams, 199 N. Y. 108, 92 N. E. 404, 139 A. S. R. 850, 35 L. R. A. (N. S.) 549.

9. People v. Keller, 31 App. Div. 248, 52 N. Y. Supp. 950; People v. Jensen, 99 App. Div. 355, 90 N. Y. Supp. 1062; People v. Scannell, 25 Misc. 619, 56 N. Y. Supp. 117, affirmed 40 App. Div. 633, 58 N. Y. Supp. 1146, 160 N. Y. 103, 54 N. E. 670; Matter of Business Men's Assoc., 54 Misc. 13, 103 N. Y. Supp. 843.

10. People v. Westchester County, 73 N. Y. 173; People v. Jaehne, 103 N. Y. 182, 8 N. E. 374; In re People, 146 N. Y. 357, 40 N. E. 988; People v. Dalton, 158 N. Y. 175, 52 N. E. 1113; People v. Brady, 49 App. Div. 238, 63 N. Y. Supp. 145; People v. Penitentiary, 154 App. Div. 473, 139 N. Y. Supp. 212; In re New York, 168 App. Div. 6, 153 N. Y. Supp. 747; McGuire v. Byrnes, 50 Hun 203, 2 N. Y. Supp. 760; Barker v. Floyd, 61 App. Div. 92, 69 N. Y. Supp. 1109; People v. Morris, 13 Wend. 325.

11. See infra, § 177.

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Tax Law of 1896.[12] But the Consolidated Laws of 1909 do not have the effect of repealing prior special laws, for it is expressly provided by statute that they shall not have such effect.[13]

§ 176. Repeal of general law by special act.— Having reached the conclusion that usually a special act is to have priority over a subsequent general law,[14] it is obvious that the special act is effective when it is enacted subsequent to an inconsistent general law. Where there has been an enactment covering the subject in general, in terms which include the particular case, and there is a subsequent enactment which makes a rule for that particular case, the latter shall be held to be all that the legislature intended for the regulation of that case.[15] In other words, a special act of local or particular application repeals an earlier general law, so far as the special act is applicable and the two are in conflict.[16] A repeal of this nature, however, is more in the nature of the creation of an exception to the general rule, than an abrogation of any part of the general law. The general law retains its force, but an exception is made for the particular case. Especially is this so, when the special law covers the whole subject matter of the general law.[17] But the general rule that repeals by implication are not favored is to be given weight in considering the effect of special laws on prior general laws. That is to say, both statutes will be given effect when they can stand together, and the repeal will not be declared unless it is clearly evinced by appropriate language.[18] And the general doctrine is fortified by statute, when it is claimed that a special act has repealed a part of the Penal Law, for it is

12. See infra, § 178.

13. Laws 1909, ch. 596, p. 1797. Montefiore Home v. Prendergast, 159 App. Div. 644, 144 N. Y. Supp. 953, affirmed without opinion, 211 N. Y. 549, 105 N. E. 1090.

14. See supra, § 175.

15. Excelsior Petroleum Co. v. Lacey, 63 N. Y. 422; Depew v. Lehigh Val. R. Co., 85 Misc. 71, 148 N. Y. Supp. 265.

16. Wood v. Wellington, 30 N. Y. 218; Matter of Murray Hill Bank, 153 N. Y. 199, 47 N. E. 298; Ulster County v. State, 177 N. Y. 189, 69 N. E. 370; Lewis v. Syracuse, 13 App. Div. 587, 43 N. Y. Supp. 455; Matter of New York, 153 App. Div. 418, 138 N. Y. Supp. 594; People v. Young, 153 App. Div. 567, 138 N. Y. Supp. 50, affirmed 207 N. Y. 522, 101 N. E. 451; Montefiore Home v. Prendergast, 159 App. Div. 644, 144 N. Y. Supp. 953, affirmed without opinion, 211 N. Y. 549, 105 N. E. 1090; Doll v. Devery, 27 Misc. 149, 57 N. Y. Supp. 767; Speckles v. Public Administrator, 1 Dem. 475.

17. Schieffelin v. McClellan, 138 App. Div. 665, 120 N. Y. Supp. 215.

18. People v. Higgins, 151 N. Y. 570, 45 N. E. 1033; Davis v. Supreme Lodge, etc., 165 N. Y. 159, 58 N. E. 891; Bath v. McBride, 163 App. Div. 714, 148 N. Y. Supp. 836, 840.

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provided in the Penal Law, section 2500, that no part thereof shall be deemed repealed, altered or amended by the passage of any subsequent statute inconsistent therewith, unless such statute shall explicitly refer thereto and directly repeal, alter or amend the Penal Law accordingly.[19] As to those cases not within the scope of a special act, a general enactment continues in force.[20]

§ 177. Statutes in irreconcilable conflict.— If, without violating the established canons of interpretation, the courts can so construe two statutes that they will be in harmony, it is their duty to give them such construction.[21] But, if the statutes are in irreconcilable conflict, it is likewise the duty of the courts to declare the abrogation of the earlier.[22] Every statute is by implication a repeal of all prior statutes, so far as it is repugnant and contrary thereto, for the latest constitutional enactment must be deemed the law to which all earlier statutes must submit so far as conflict exists.[23] Even a prior special act must be deemed

19. See infra, § 179.

20. People v. Morrison, 78 N. Y. 84; People v. Dalton, 158 N. Y. 175, 52 N. E. 1113; Davis v. Supreme Lodge, etc., 165 N. Y. 159, 58 N. E. 891; Bath v. McBride, 163 App. Div. 714, 148 N. Y. Supp. 836, 840; People v. Edwards, 56 Hun 377, 10 N. Y. Supp. 335; Matter of Water Com'rs, 50 Hun 605 mem., 3 N. Y. Supp. 347, 19 N. Y. St. Rep. 825.

21. See supra, § 170.

22. People v. McDonough, 28 Misc. 652, 60 N. Y. Supp. 45.

23. Guilford v. Chenango County, 13 N. Y. 143; People v. Bull, 46 N. Y. 57, 7 Am. Rep. 302; Mongeon v. People, 55 N. Y. 613; People v. Quigg, 59 N. Y. 83; Holley v. New York, 59 N. Y. 166; In re Mead, 74 N. Y. 216; Pratt v. Munson, 84 N. Y. 582; Lyddy v. Long Island City, 104 N. Y. 218, 10 N. E. 155; Horton v. Gantwell, 108 N. Y. 255, 15 N. E. 546; In re Washington St. A., etc., R. Co., 115 N. Y. 442, 22 N. E. 356; People v. Moran, 123 N. Y. 254, 25 N. E. 412, 20 A. S. R. 732, 10 L. R. A. 109; In re Tiffany, 179 N. Y. 455, 72 N. E. 512; Choate v. Buffalo, 39 App. Div. 379, 57 N. Y. Supp. 383, affirmed 167 N. Y. 597, 60 N. E. 1108; People v. Fuller, 41 App. Div. 404, 58 N. Y. Supp. 835; People v. Board of Education, 55 App. Div. 295, 66 N. Y. Supp. 963; Czarnowsky v. Rochester, 55 App. Div. 388, 66 N. Y. Supp. 931, affirmed without opinion 165 N. Y. 649, 59 N. E. 1121; People v. Coler, 65 App. Div. 217, 72 N. Y. Supp. 564; People v. Board of Police, 79 App. Div. 82, 79 N. Y. Supp. 710; People v. Kempner, 144 App. Div. 339, 129 N. Y. Supp. 460; Contractors' Supply Co. v. New York, 153 App. Div. 60, 138 N. Y. Supp. 242; Matter of Ward, 10 Misc. 424, 31 N. Y. Supp. 49; People v. Cleary, 13 Misc. 546, 35 N. Y. Supp. 588; Boyce v. Perry, 26 Misc. 355, 57 N. Y. Supp. 214; People v. McDonough, 28 Misc. 652, 60 N. Y. Supp. 45; Bock v. New York, 31 Misc. 55, 64 N. Y. Supp. 777; People v. Scott, 31 Misc. 131, 64 N. Y. Supp. 970, affirmed 57 App. Div. 630, 68 N. Y. Supp. 1146; Carpenter v. Newland, 92 Misc. 596, 156 N. Y. Supp. 438; St. John v. Pierce, 22 Barb. 362; Rochester v. Barnes, 26 Barb. 657; People v. New York, 32 Barb. 102; Canastota, etc., Plank Road Co. v. Parkill, 50 Barb. 601; People v. Van Nort, 64 Barb. 205; Excelsior Petroleum Co. v. Embury, 67 Barb. 261; Werner v. German Savings Bank, 2 Daly 406; Phillips v. New York, 1 Hilt. 483; Tilley v. Philips, 3 How. Pr. 364; Cure v. Crawford, 5 How. Pr. 293; Palmer v. Adams, 22 How. Pr. 375; Hartman v. New York, 51 How. Pr. 351; Westchester v. Davis 7 Hun 647; Angel v. Hume, 17 Hun 374; In re Walter, 21 Hun 533, affirmed 83 N. Y. 538; Victory Webb Printing, etc., Co. v. Beecher, 26 Hun 48; People v. Board of Canvassers, 77

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abrogated when it is in irreconcilable conflict with a subsequent general enactment.[24] The circumstance that the later act contains no repealing clause does not affect its force. The repeal arises from the repugnancy of the two statutes, not from any expression of a general intent to repeal inconsistent acts.[25] The adoption of a constitutional provision inconsistent with a prior statute has the same effect as the enactment of an inconsistent statute. The former act thereby becomes abrogated.[26]

§ 178. Later acts or revisions covering same ground.— It is a general rule in reference to repeals by implication, that, if a later statute does not purport to amend a former one, but covers the whole subject and was evidently intended by the legislature to furnish the only law on the subject, the former is necessarily held to have been repealed by implication.[27] In such a case, it

Hun 372, 28 N. Y. Supp. 871, affirmed 143 N. Y. 84, 37 N. E. 649; Excise Com'rs v. Willey, 2 Lans. 427; People v. Divine, 5 Park. Crim. 62; Olean v. King, 5 N. Y. St. Rep. 169, affirmed, 116 N. Y. 355, 22 N. E. 559; People v. Superior Court, 56 Hun 643, 9 N. Y. Supp. 691, 30 N. Y. St. Rep. 704; Buffalo v. Neal, 86 Hun 76, 33 N. Y. Supp. 346; Matter of Wallace, 36 Misc. 1, 72 N. Y. Supp. 445; Burdick v. Phillips, 17 Wkly. Dig. 440; Harrington v. Rochester, 10 Wend. 547; Livingston v. Harris, 11 Wend. 329.

24. People v. Dalton, 158 N. Y. 175, 52 N. E. 1113; People v. Kaye, 160 App. Div. 644, 146 N. Y. Supp. 398, affirmed 212 N. Y. 407, 106 N. E. 122; People v. Brady, 49 App. Div. 238, 63 N. Y. Supp. 145; Buffalo v. Neal, 86 Hun 76, 33 N. Y. Supp. 346.

25. People v. Board of Education, 55 App. Div. 295, 66 N. Y. Supp. 963; People v. Coler, 65 App. Div. 217, 72 N. Y. Supp. 564; Victory Webb Printing, etc., Co. v. Beecher, 26 Hun 48.

26. Pierce v. Delamater, 1 N. Y. 17; People v. Cleary, 13 Misc. 546, 35 N. Y. Supp. 588, 70 N. Y. St. Rep. 209.

27. People v. Westchester County, 73 N. Y. 173; Heckmann v. Pinkney, 81 N. Y. 211; People v. Ontario County, 85 N. Y. 323; People v. Jaehne, 103 N. Y. 182, 8 N. E. 374; In re New York Institution, etc., 121 N. Y. 234, 24 N. E. 378; People v. Harris, 123 N. Y. 70, 25 N. E. 317; Cromwell v. McLean, 123 N. Y. 474, 25 N. E. 932; Hearst v. Shea, 156 N. Y. 169, 50 N. E. 788; In re Tiffany, 179 N. Y. 455, 72 N. E. 512; Pratt Institute v. New York, 183 N. Y. 151, 75 N. E. 1119, 5 Ann. Cas. 198; In re Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994; Peterson v. Martino, 210 N. Y. 412, 104 N. E. 916; People v. Lytle, 7 App. Div. 553, 40 N. Y. Supp. 153; People v. House of Refuge, 22 App. Div. 254, 47 N. Y. Supp. 767; Wood v. Wood, 61 App. Div. 96, 70 N. Y. Supp. 72; People v. Coler, 65 App. Div. 217, 72 N. Y. Supp. 564; Metcalfe v. Union Trust Co., 87 App. Div. 144, 84 N. Y. Supp. 183; Matter of Troy Press Co., 94 App. Div. 514, 88 N. Y. Supp. 115; People v. O'Gorman, 124 App. Div. 222, 108 N. Y. 737; Vidi v. United Surety Co., 155 App. Div. 502, 140 N. Y. Supp. 612; People v. Cleary, 13 Misc. 546, 35 N. Y. Supp. 588, 70 N. Y. St. Rep. 209; Beardsley v. New York, etc., R. Co., 17 Misc. 256, 40 N. Y. Supp. 1077; People v. Peck, 22 Misc. 477, 50 N. Y. Supp. 820, affirmed 32 App. Div. 624, 52 N. Y. Supp. 259; Matter of Connellan, 25 Misc. 592, 56 N. Y. Supp. 157; Matter of Lord, 10 Abb. N. Cas. 293; Fort v. Burch, 6 Barb. 60; Excelsior Petroleum Co. v. Embury, 67 Barb. 261; Columbian Mfg. Co. v. Vanderpoel, 4 Cow, 556; New York, etc., R. Co. v. Delaware County, 67 How. Pr. 5; Valentine v. Duryea, 37 Hun 427; Armbruster v. Wilson, 43 Hun 261, 4 N. Y. St. Rep. 351; Kilbourne v. Sullivan County, 62 Hun 210, 16 N. Y. Supp. 507; Eagan v. Rochester, 68 Hun 331, 22 N. Y. Supp. 955; Reinhardt v.

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is not required that the new statute be repugnant in all its provisions to the old one. The old one is repealed as an entirety, though certain provisions thereof might have been consistently inserted in the new statute but were not.[28] In other words, a general statute covering the same subject matter and containing new provisions and manifestly designed by the legislature to embrace the entire law on the subject, operates to repeal by implication a former statute, though the two are not repugnant.[29] Thus, when a statute is amended "to read as follows," the parts of the old act which are omitted from the new are impliedly repealed.[30] Where the purpose of the revision or consolidation is to substitute uniformity for diversity, the general law will be deemed to repeal prior special acts, though they are not among the laws enumerated in the schedule of laws repealed.[31] And this rule has been applied in some cases to the extent that the general act has been permitted to repeal by implication prior laws

Fritsche, 69 Hun 565, 23 N. Y. Supp. 958; Ackerson v. Niagara County, 72 Hun 616, 25 N. Y. Supp. 196; People v. Vosburgh, 76 Hun 562, 28 N. Y. Supp. 208; People v. Board of Canvassers, 77 Hun 372, 28 N. Y. Supp. 871; People v. Upson, 79 Hun 87, 29 N. Y. Supp. 615, affirmed 147 N. Y. 716, mem., 42 N. E. 725; McDermott v. Nassau Electric R. Co., 85 Hun 422, 32 N. Y. Supp. 884, affirmed 147 N. Y. 700, 42 N. E. 724; Wirt v. Allegany County, 90 Hun 205, 35 N. Y. Supp. 887; Anderson v. Anderson, 112 N. Y. 104, 19 N. E. 427, 2 L. R. A. 175, 20 N. Y. St. Rep. 344; Matter of Buffalo, 18 N. Y. Supp. 771, 46 N. Y. St. Rep. 81; People v. Board of Canvassers, 77 Hun 372, 28 N. Y. 871; Matter of Street Opening, 86 Hun 267, 33 N. Y. Supp. 299; People v. Fallon, 27 Misc. 16, 57 N. Y. Supp. 931; Bock v. New York, 31 Misc. 55, 64 N. Y. Supp. 777; Barker v. Floyd, 61 App. Div. 92, 69 N. Y. Supp. 1109; Leask v. Horton, 39 Misc. 144, 79 N. Y. Supp. 148; Matter of United States Trust Co., 80 App. Div. 77, 80 N. Y. Supp. 475; Ely v. Azoy, 39 Misc. 669, 80 N. Y. Supp. 620.

28. People v. Brooklyn, 69 N. Y. 605; In re New York Institution, etc., 121 N. Y. 234, 24 N. E. 378; Buffalo v. Lewis, 192 N. Y. 193, 84 N. E. 809; Matter of Troy Press Co., 94 App. Div. 514, 88 N. Y. Supp. 115; Heckmann v. Pinkney, 6 Abb. N. Cas. 371; Excelsior Petroleum Co. v. Embury, 67 Barb. 261; Valentine v. Duryea, 37 Hun 427.

29. People v. The Gold, etc., Tel. Co., 98 N. Y. 67; People v. Jaehne, 103 N. Y. 182, 8 N. E. 374; In re New York Institution, etc., 121 N. Y. 234, 24 N. E. 378; Buffalo v. Lewis, 192 N. Y. 193, 84 N. E. 809; Wood v. Wood, 61 App. Div. 96, 70 N. Y. Supp. 72; Bock v. New York, 31 Misc. 55, 64 N. Y. Supp. 777; Dexter, etc., Plank Road Co. v. Allen, 16 Barb. 15; People v. Meakin, 8 N. Y. Crim. 416, 21 N. Y. Supp. 1103; Eagan v. Rochester, 68 Hun 331, 22 N. Y. Supp. 955; McDermott v. Nassau Electric R. Co., 85 Hun 422, 32 N. Y. Supp. 884, affirmed 147 N. Y. 700, 42 N. E. 724; Barker v. Floyd, 61 App. Div. 92, 69 N. Y. Supp. 1109. "It is well settled that where a later act covers the whole subject of earlier acts and embraces new provisions and which act plainly shows that it was intended not only as a substitute for the earlier acts but to cover the whole subject then considered by the legislature and to prescribe the only rules in respect thereto, it will operate as a repeal of all former statutes relating to such subject-matter even if such former acts are not in all respects repugnant to the new act." Buffalo v. Lewis, 192 N. Y. 193, 84 N. E. 809.

30. See supra, § 116.

31. Peterson v. Martino, 210 N. Y. 412, 104 N. E. 916.

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of special or local application.[32] Thus, the General Tax Law of 1896 was deemed a revision and consolidation of the tax laws of the state, and was thought to repeal special and local tax laws.[33] An exception to this rule may be found where the prior special act covers a complete scheme for the taxation of property from the assessment to the sale; such a special code ought not to be deemed to have been abrogated by a statute of general application.[34] And especially is this so, when the special system has been recognized as continuing by amendments made thereto since the enactment of the General Tax Law.[35] Another exception arises when the endowment of a charitable corporation has been induced by a promise of exemption of taxation, which has been acted upon; in such a case, the exemption will not be deemed to have been repealed impliedly by the General Tax Law.[36] Another exception has been created with respect to the Consolidated Laws of 1909. It is provided by statute that all special laws in force at the time of the enactment of such consolidated laws shall be of the same force and effect as

32. People v. Jaehne, 103 N. Y. 182, 8 N. E. 374; People v. Peck, 157 N. Y. 51, 51 N. E. 412; In re Huntington, 168 N. Y. 399, 61 N. E. 643; Pratt Institute v. New York, 183 N. Y. 151, 75 N. E. 1119, 5 Ann. Cas. 198; Peterson v. Martino, 210 N. Y. 412, 104 N. E. 916; Wood v. Wood, 61 App. Div. 96, 70 N. Y. Supp. 72; Troy Press Co. v. Mann, 115 App. Div. 25, 100 N. Y. 516, affirmed 187 N. Y. 279, 79 N. E. 1006; Matter of McIntyre, 124 App. Div. 66, 108 N. Y. Supp. 242; Cone v. Lauer, 131 App. Div. 193, 115 N. Y. Supp. 644; Montefiore Home v. Prendergast, 159 App. Div. 644, 144 N. Y. Supp. 953, affirmed without opinion, 211 N. Y. 549, 105 N. E. 1090; People v. Kaye, 160 App. Div. 644, 146 N. Y. Supp. 398, affirmed, 212 N. Y. 407, 106 N. E. 122; Beardsley v. New York, etc., R. Co., 17 Misc. 256, 40 N. Y. Supp. 1077; Buffalo v. Neal, 86 Hun 76, 33 N. Y. Supp. 346; Barker v. Floyd, 61 App. Div. 92, 69 N. Y. Supp. 1109. But see Parker v. Elmira, etc., R. Co., 165 N. Y. 274, 59 N. E. 81, holding that the General Railroad Law of 1890 did not impliedly repeal a special statute authorizing a certain railroad to charge fare at the rate of four cents a mile.

33. People v. Peck, 157 N. Y. 51, 51 N. E. 412; Pratt Institute v. New York, 183 N. Y. 151, 75 N. E. 1119, 5 Ann. Cas. 198; Peterson v. Martino, 210 N. Y. 412, 104 N. E. 916; Troy Press Co. v. Mann, 115 App. Div. 25, 100 N. Y. Supp. 516, affirmed 187 N. Y. 279, 79 N. E. 1006; Matter of McIntyre, 124 App. Div. 66, 108 N. Y Supp. 242; Cone v. Lauer, 131 App. Div. 193, 115 N. Y. Supp. 644; Carroll v. McArdle, 157 App. Div. 404, 142 N. Y. Supp. 657; People v. Jansen, 75 Misc. 139, 134 N. Y. Supp. 897. See also People v. Board of Assessors, 134 N. Y. Supp. 177. Compare Welstead v. Jennings, 104 App. Div. 179, 93 N. Y. Supp. 339, affirmed without opinion, 185 N. Y. 588, 78 N. E. 1114.

34. Fulton v. Krull, 200 N. Y. 105, 93 N. E. 494.

35. Carroll v. McArdle, 216 N. Y. 232, 110 N. E. 446. And see supra, § 167, as to the subsequent legislative recognition of a repealed act.

36. People v. Raymond, 194 N. Y. 189, 87 N. E. 90. As a general proposition, it has been held that the General Tax Law had the effect of repealing special exemptions granted to charitable institutions. In re Huntington, 168 N. Y. 399, 61 N. E. 643; Pratt Institute v. New York, 183 N. Y. 151, 75 N. E. 1119, 5 Ann. Cas 198.

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they were before the enactment of such consolidated laws.[37] The general rule under discussion is subject to limitations. The intent of the legislature is the controlling element in determining whether a statute has been impliedly repealed; and, although a statute may be deemed to cover the entire subject matter of a prior act, such earlier act will not be repealed thereby if a contrary legislative intention is evinced.[38] Where a statute is impliedly repealed and re-enacted in another act or revision, rights under the former law are not necessarily lost by the repeal. Under such circumstances, the new statute is considered a continuation of the former so as to save rights acquired thereunder.[39]

§ 179. Implication repeals forbidden by statute.— The legislature by the aid of statutory rules has curtailed in some cases the repealing effect of an act inconsistent with an earlier statute. Particularly, has the legislature thought it wise to restrict the effect of the Consolidated Laws of 1909. Thus, no provision of the Consolidated Laws is permitted to repeal by implication a statute passed at the same session of the legislature or before the Consolidated Laws went into effect.[40] And it is declared that the Consolidated Laws should not be construed to amend, repeal or otherwise affect any provision of the Penal Law, Code of Civil Procedure or Code of Criminal Procedure unless expressly so stated.[41] Moreover, it was provided by statute that all special laws in force at the time of the enactment of such Consolidated Laws should be of the same force and effect as they were before the enactment of such Consolidated Laws.[42] The legislature has also sought to protect the Penal Law from being repealed by implication. Section 2500 of such law provides, "No provision of this chapter, or any part thereof, shall be deemed repealed, altered or amended by the passage of any subsequent statute inconsistent therewith, unless such statute shall explicitly refer

37. Laws New York 1909, ch. 596, p. 1797; Montefiore Home v. Prendergast, 159 App. Div. 644, 144 N. Y. Supp. 953, affirmed without opinion 211 N. Y. 549, 105 N. E. 1090.

38. People v. Harris, 123 N. Y. 70, 25 N. E. 317.

39. General Construction Law, § 95. And see supra, § 164.

40. General Construction Law, § 100. A similar provision in the Statutory Construction Law of 1892 was thought to be designed for the retention of special laws on cognate subjects which had been passed before the revision went into effect, and not applicable to general laws embodied in the revision itself. Bank of Metropolis v. Faber, 1 App. Div. 341, 37 N. Y. Supp. 423; People v. Potter, 40 Misc. 485, 82 N. Y. Supp. 649, affirmed 88 App. Div. 239, 85 N. Y. Supp. 460.

41. General Construction Law, § 101.

42. Laws 1909, ch. 596, p. 1797.

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thereto and directly repeal, alter or amend this chapter accordingly." Before the adoption of the Penal Law in 1909, a similar provision was contained in the Penal Code.[43] Of course, the legislature of 1909 cannot control the meaning of language used by subsequent legislatures, and therefore it is thought that, if it clearly appeared that a statute was designed to repeal a provision of Penal Law, the courts would necessarily be required to give effect to such intent though it was not expressed by means of an express repeal. But, since the enactment of this statute, it can be argued that the lawmakers enact repeals of the Penal Law with knowledge thereof and that, if a repeal were intended, it would be expressed so as to comply with the statutory rule. The weight of this argument and the disfavor with which implied repeals are received, render it practically impossible to effect a repeal of the provisions of the Penal Law other than by express words.[44]

Effect of Repeals

§ 180. In absence of saving clause.— The legislature is restrained by the state and federal constitutions as to the rights which it may abrogate by the repeal of a statute. It cannot interfere with vested rights without due process of law; nor can it pass any law which will impair the obligation of a contract; and a repealing statute will never be allowed to have such effect. But a constitutional repeal wipes out a law as though it never existed;[45] and, unless saved by the legislature, all inchoate rights which have arisen under the statute are divested.[46] When the statutory right is abrogated, all remedies for the enforcement of the right are carried with it, as incidental thereto.[47] If a penal statute is repealed, the penalty is lost,[48] though the repeal takes

43. § 728.

44. See the following cases where the statute has been considered as forbidding implied repeals of the Penal Law: People v. Koenig, 9 App. Div. 436, 41 N. Y. Supp. 283; People v. Jensen, 99 App. Div. 355, 90 N. Y. Supp. 1062; People v. Hatter, 22 N. Y. Supp. 688; American Society, etc., v. Gloversville, 78 Hun 40, 29 N. Y. Supp. 257.

45. Washburn v. Franklin, 35 Barb. 599, 13 Abb. Pr. 140; People v. Tieman, 30 Barb. 193; Thompson v. Sayre, 1 Denio 175; Butler v. Palmer, 1 Hill 324.

46. McCotter v. Hooker, 8 N. Y. 497; Bock v. New York, 31 Misc. 55, 64 N. Y. Supp. 777; Hoppock v. Stone, 49 Barb. 524; Richardson v. Pulver, 63 Barb. 67; McCotter v. Hooker, 2 Edm. Sel. Cas. 260; Butler v. Palmer, 1 Hill 324; Church v. Rhodes, 6 How. Pr. 281.

47. Schoepflin v. Calkins, 5 Misc. 159, 25 N. Y. Supp. 696.

48. Curtis v. Leavitt, 15 N. Y. 9; Nash v. White's Bank, 105 N. Y. 243, 11 N. E. 946; People v. Ulster, etc., R. Co., 128 N. Y. 240, 28 N. E. 635; Quinlan v. Welch, 141 N. Y. 158, 36 N. E. 12; Westchester County v. Dressner, 23 App. Div. 215, 48 N. Y. Supp. 953; New York v. Biglow, 13

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place while the prosecution for it is pending.[49] Upon the repeal of a criminal statute, unless saved, all pending criminal proceedings fail.[50] In such a case, a new statute covering the crime in question cannot be applied, for it is an *ex post facto* law as to such crime, and hence the accused can escape.[51] So, too, when jurisdiction is conferred by statute, the repeal thereof arrests and terminates all proceedings under it which are not fully completed so that they can stand alone without the exercise of any further power under the repealed statute, unless there is a saving clause exempting pending proceedings from its operation.[52] Likewise, when a statute conferring a remedy is repealed without any saving clause or reservation, the repeal takes the life of pending actions.[53] Similarly, subject to the rules of constitutional law, if a party has a defense based on a statute, the repeal of the statute without a saving clause destroys the defense as to pending proceedings.[54] Practically the only important exception to the general rule now under consideration, is in the case of statutes repealed and simultaneously re-enacted. Under such circumstances, the old law is deemed continuously in force.[55]

§ 181. Particular saving clause.— The injustice which frequently arose from the common law doctrine of the effect of repeals naturally caused the insertion in carefully drawn acts of provisions saving pre-existing rights or pending proceedings from the effect of the repeal. And, in the evolution of the law, the legislature finally enacted a general statute attaching a saving clause to every repealing statute not especially so equipped.[56]

Misc. 42, 34 N. Y. Supp. 92, 68 N. Y. St. Rep. 163; Smith v. Banker, 3 How. Pr. 142; West Troy Fire Department v. Ogden, 59 How. Pr. 21; Bank of Monroe v. Finlay, 6 Hun 584; Victory Webb Printing, etc., Co., v. Beecher, 26 Hun 48; Gorman v. McArdle, 67 Hun 484, 22 N. Y. Supp. 479; Davidson v. Witthaus, 106 App. Div. 182, 94 N. Y. Supp. 428.

49. Butler v. Palmer, 1 Hill 324; People v. Van Pelt, 4 How. Pr. 36. "The repeal of a law imposing a penalty, though it take place after conviction, arrests the judgment." Butler v. Palmer, 1 Hill 324.

50. Hartung v. People, 22 N. Y. 95; People v. Meakim, 8 N. Y. Crim. 308, 21 N. Y. Supp. 1103, affirmed 144 N. Y. 646, 39 N. E. 494; People v. Page, 7 N. Y. Crim. 5, 4 N. Y. Supp. 780, 22 N. Y. St. Rep. 277.

51. Hartung v. People, 22 N. Y. 95; Hartung v. People, 28 N. Y. 400; People v. Cleary, 13 Misc. 546, 35 N. Y. Supp. 588, 70 N. Y. St. Rep. 209.

52. Angel v. Hume, 17 Hun 374.

53. Schoepflin v. Calkins, 5 Misc. 159, 25 N. Y. Supp. 696; Church v. Rhodes, 6 How. Pr. 281; Hughson v. Rochester, 49 Hun 45, 1 N. Y. Supp. 725; Davidson v. Witthaus, 106 App. Div. 182, 94 N. Y. Supp. 428.

54. Curtis v. Leavitt, 15 N. Y. 9; Beilin v. Wein, 51 Misc. 595, 101 N. Y. Supp. 38; Central Bank v. Empire Stone Dressing Co., 26 Barb. 23; Washburn v. Franklin, 35 Barb. 599 13 Abb. Pr. 140.

55. See supra, § 164.

56. See infra, § 182.

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There is no reason why either a general or particular saving clause should not receive due effect. No constitutional right is infringed even in the case of a criminal statute which authorizes the continuance of pending criminal proceedings after a repeal of the act creating the crime.[57] Thus, saving clauses annexed to statutes have, according to their terms, been construed as being continued in force so far as existing rights or pending proceedings were concerned.[58] If a statute is complete in itself and contains its own saving clause, the one provided by the General Construction Law is not applicable.[59] The fact that the legislature creates a particular saving provision for the particular case indicates that it did not intend the general provision to cover the case. If a saving clause expressly provides that proceedings commenced before a certain date shall remain unaffected, it is clearly implied that suits commenced after that date are affected.[60]

§ 182. General saving statute.— The common law doctrine as to the effect of repeals has been revolutionized by statute. In some cases particular statutes have been enacted with clauses saving existing rights and remedies from the effect of the repeal.[61] But a general rule for statutes not having saving clauses is provided by section 93 of the General Construction Law, as follows: "The repeal of a statute or part thereof shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected." This section saves particular substantive rights, and another section saves pending proceedings from the effect of the repeal. Section 94 of the General Construction Law provides that, "Unless otherwise specially provided by law, all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a statute so repealed, and pending immediately prior to the

57. People v. Nolan, 115 N. Y. 660, 21 N. E. 1060; Tribune Assoc. v. New York, 48 Barb. 240; People v. Maxwell, 83 Hun 157, 31 N. Y. Supp. 564.

58. Beilan v. Wein, 51 Misc. 595, 101 N. Y. Supp. 38; Tribune Assoc. v. New York, 48 Barb. 240; Oneida v. Thompson, 92 Hun 16, 37 N. Y. Supp 889; Milan v. Dutchess County, 14 Wend. 71.

59. Palmer v. Hickory Grove Cemetery, 84 App. Div. 600, 82 N. Y. Supp 973.

60. Lennon v. New York, 55 N. Y 361.

61. See supra, § 181.

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taking effect of such repeal, may be prosecuted and defended to final effect in the same manner as if such provisions were not so repealed." These two provisions were taken from section 31 of the Statutory Construction Law of 1892. This section was construed as applicable, not only to the general laws reported by the statutory revision committee, but also to future legislation.[62] It is, of course, true that the legislature of 1892 cannot control the language or effect of acts passed by subsequent legislators.[63] A subsequent legislature can give its repealing act such force and effect as it desires. But, in the absence of anything in the subsequent statute to indicate a contrary intention, it is presumed that its repealing acts are adopted with the statutory rule of construction in view, and that they are intended to have the effect prescribed by the statutory rule.[64] Thus, the practical effect of the general statute is to attach a saving clause to subsequent legislation.[65] By another provision, the General Construction Law is not applicable to a statute when its general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required to be given by such General Construction Law.[66] So far as these provisions concerning the effect of repeals are concerned, the rule, no doubt, would be the same if the General Construction Law contained no such provision as to its application. If the legislature indicates an intent concerning the effect of its repeals which is contrary to the rule stated in the General

62. People v. New York Cent., etc., R. Co., 156 N. Y. 570, 51 N. E. 312; Close v. Potter, 2 Misc. 1, 21 N. Y. Supp. 1086; People v. Jackson, 36 Misc. 282, 73 N. Y. Supp. 461; People v. Scannell, 40 Misc. 297, 82 N. Y. Supp. 362. Contra, People v. Cleary, 13 Misc. 546, 35 N. Y. Supp. 588, 70 N. Y. St. Rep. 209.

63. Davidson v. Witthaus, 106 App. Div. 182, 94 N. Y. Supp. 428; Thacher v. Steuben County, 21 Misc. 271, 47 N. Y. Supp. 124.

64. McCann v. New York, 52 App. Div. 358, 65 N. Y. Supp. 308, affirmed 166 N. Y. 587, 59 N. E. 1125; Nason Mfg. Co. v. Garden, 52 App. Div. 363, 65 N. Y. Supp. 147; New York v. Herdje, 68 App. Div. 370, 74 N. Y. Supp. 104; People v. Madill, 91 Hun 152, 36 N. Y. Supp. 536, 1130.

65. Hartung v. People, 26 N. Y. 167; People v. Campbell, 152 N. Y. 51, 46 N. E. 176; People v. New York Cent., etc., R. Co., 156 N. Y. 570, 51 N. E. 312; Champlain v. McCrea, 165 N. Y. 264, 59 N. E. 83; Nason Mfg. Co. v. Garden, 52 App. Div. 363, 65 N. Y. Supp. 147; People v. Bremer, 69 App. Div. 14, 74 N. Y. Supp. 570; People v. Mulford, 140 App. Div. 716, 125 N. Y. Supp. 680, affirmed without opinion 202 N. Y. 624, 96 N. E. 1125; Thacher v. Steuben County, 21 Misc. 271, 47 N. Y. Supp. 124; People v. Jackson, 36 Misc. 282, 73 N. Y. Supp. 461; People v. Scannell, 40 Misc. 297, 82 N. Y. Supp. 362; People v. Madill, 91 Hun 152, 36 N. Y. Supp. 536, 1130; People v. Bremer, 69 App. Div. 14, 74 N. Y. Supp. 570.

66. General Construction Law. § 110; Davidson v. Witthaus, 106 App. Div. 182, 94 N. Y. Supp. 428; People v. Jackson, 36 Misc. 282, 73 N. Y. Supp. 461.

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Construction Law, such law is thereby impliedly repealed to the extent necessary to effectuate the latest intent of the legislature.[67]

IX. Revised Statutes; General Laws; Consolidated Laws

§ 183. Historical statement.— In the early political history of New York State, revisions (so-called) of its laws were frequent. Thus, as early as 1786 it was thought wise to revise the laws of the colony and state, and as a result the "Jones and Varick" revision was produced.[1] Again, in 1800, James Kent and Jacob Radcliff were appointed to collect into proper form the public acts of the state, and in 1802 the "Kent and Radcliff" revision was published. This was followed in 1813 by the "VanNess and Woodworth" revision which was authorized by the laws of 1811.[2] These early editions of statutes, however, were in the nature of authorized publications of the existing statutory law, and not legislative enactments constituting a revision or consolidation of the laws. But in 1824, commissioners were appointed to prepare a revision of statutes for legislative action. The work of the Commissioners was approved by the lawmakers and resulted in the "Revised Statutes." These were enacted in 1828 and published in 1829. For many years from that time, though various editions of the "Revised Statutes" were published, no general statutory revision or consolidation of laws was attempted. In lieu thereof, the legislature devoted itself to acts codifying the criminal law and procedure and the civil procedure. The Code of Procedure was enacted in 1848 and 1849. Then, in 1876, the Code of Remedial Justice covered the system of civil practice, but this act was shortlived. In 1877 the Code of Civil Procedure was enacted. This act was followed by the Penal Code and Code of Criminal Procedure which were enacted in 1881. Then the legislature turned its attention to the general laws of the state and in 1889 authorized the appointment of commissioners to prepare and report bills for the consolidation and revision of general statutes upon certain subjects. The authority of the commissioners was continued and extended by successive legislatures and finally resulted in the adoption of forty-eight general laws. These several general laws were enacted from 1890 to 1900 inclusive. But the statutory revision commission

67. Matter of New York, 153 App. Div. 418, 138 N. Y. Supp. 594.

1. See Laws 1786, ch. 35.

2. Laws 1811, ch. 150.

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was not permitted to finish the work it had outlined. In the place of such commission, the legislature a few years later [3] created a board of statutory consolidation to direct and control the revision, simplification, arrangement and consolidation of the statutes of the state. In 1908 the Board of Statutory Consolidation made its report to the legislature with its proposed consolidating statutes, and this report resulted in the enactment of the various chapters of the present Consolidated Laws in 1909 and 1910.

§ 184. Change in language.— When a change is made in the language of a particular statute, the inference may be drawn that the legislature intended to make a change in the meaning of the statute. It is easier to presume that the lawmakers intended a change in the statute than to charge them with deliberately declaring an amendment which leaves the law in the same condition as before.[4] But the situation is vastly different in the case of a revision or consolidation of statutes. Then no material change in the law is generally intended, and hence a change in phraseology is looked upon as an improvement in verbiage, not as importing a change in the law.[5] And this general doctrine has especial force, when there is no change in verbiage, but there is merely a rearrangement or new division of the statutory law.[6] But the rule is not absolute, and it must yield whenever it appears

3. Laws 1904, ch. 664.

4. See supra, § 115.

5. James v. Patten, 6 N. Y. 9, 55 Am. Dec. 376; Williams v. Williams, 8 N. Y. 525; Hall v. Western Transp. Co., 34 N. Y. 284; Jenkins v. Fahey, 73 N. Y. 355; Betsinger v. Chapman, 88 N. Y. 487; Lynk v. Weaver, 128 N. Y. 171, 28 N. E. 508; People v. Fanshawe, 137 N. Y. 68, 32 N. E. 1102; Henavie v. New York Cent., etc., R. Co., 154 N. Y. 278, 48 N. E. 525; People v. England, 16 App. Div. 97, 45 N. Y. Supp. 12; DeGrauw v. Long Island Electric R. Co., 43 App. Div. 502, 60 N. Y. Supp. 163, affirmed 163 N. Y. 597, 57 N. E. 1108; Robinson v. Robinson, 146 App. Div. 533, 131 N. Y. Supp. 260; Campbell v. Powers, 155 App. Div. 862, 140 N. Y. Supp. 675; Caesar v. Bernard, 156 App. Div. 724, 141 N. Y. Supp. 659, affirmed on opinion below, 209 N. Y. 570, 103 N. E. 1122; People v. Purdy, 167 App. Div. 857, 153 N. Y. Supp. 793; Matter of Freeholders, 44 Misc. 431, 90 N. Y. Supp. 110; Merchants' Bank v. Bliss, 13 Abb. Pr. 225, 21 How. Pr. 365; Hoffman v. Delihanty, 13 Abb. Pr. 388; Croswell v. Crane, 7 Barb. 191; Elwood v. Klock, 13 Barb. 50; Taylor v. Delancey, 2 Caines Cas. 143; Orser's Estate, 4 Civ. Pro. 129; Humbert v. St. Stephen's Church, 1 Edw. 308; Theriat v. Hart, 2 Hill 380; Gaffney v. Colvill, 6 Hill 567; Parmelee v. Thompson, 7 Hill 77; People v. Deming, 1 Hilt. 271, 13 How. Pr. 441; German Bank v. Dash, 60 How. Pr. 124; Douglas v. Douglas, 5 Hun 140; Tompkins v. Purcell, 12 Hun 662; Whitney v. Whitney, 63 Hun 59, 18 N. Y. Supp. 3; In re Yates, 4 Johns. 317; Goodell v. Jackson, 20 Johns. 693, 11 Am. Dec. 351; Dominick v. Michael, 4 Sandf. 374; McAvoy v. New York, 52 App. Div. 485, 65 N. Y. Supp. 274; In re Brown, 21 Wend. 316; Douglass v. Howland, 24 Wend. 35.

6. Davis v. Davis, 75 N. Y. 221.

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to have been the legislative intent to make a change in the existing rule.[7] The intent of the legislature is always the controlling element in the construction of statutes.[8] A change in phraseology may be so marked as to indicate that the legislature intended some other result than grammatical improvement.[9] If some parts of a statute are omitted upon its revision, it is not the function of the courts to supply such parts; on the contrary, those parts are considered as repealed.[10] But the intent of the legislature to alter the law must be evident, or the language of the new act must be palpably such as to require a different construction, before the courts will hold the law changed.[11] The doctrine here referred to is applicable only when it is doubtful whether any change has been made; if it is clear that the law has been materially changed, but the meaning of a part of the new law is ambiguous, the law before the revision is not so forceful in ascertaining the legislative intent with reference to the new provisions.[12]

§ 185. Reference to notes of revisers.— In the construction of statutes, the courts should have all the light available. If the commissioners or revisers who prepared a general statute made a formal report with notes relative to certain sections of the new law, these may be deemed of assistance in determining the meaning of such sections.[13] A report of this character is always before the court, for the courts will take judicial notice of its contents.[14] Such report may be especially valuable for the purpose of showing the method adopted in the work of consolidating, revising, rearranging and repealing the various laws within the scope of their undertaking.[15] If the codifiers state that a provision is designed for a certain object, and the legislature enacts the provision in the proposed form without anything to indicate its dissent from that design, the statute generally will be construed to

7. James v. Patten, 6 N. Y. 9, 55 Am. Dec. 376; Campbell v. Powers, 155 App. Div. 862, 140 N. Y. Supp. 675.

8. See supra, § 52.

9. DeGrauw v. Long Island Electric R. Co., 43 App. Div. 502, 60 N. Y. Supp. 163, affirmed 163 N. Y. 597, 57 N. E. 1108; Lyon v. Smith, 11 Barb. 124; Parmelee v. Thompson, 7 Hill 77; Fish v. Thrasher, 21 Hun 15.

10. Lyon v. Smith, 11 Barb. 124.

11. Croswell v. Crane, 7 Barb. 191.

12. Taggard v. Roosevelt, 2 E. D. Smith 100, 8 How. Pr. 141.

13. People v. Conroy, 97 N. Y. 62; People v. Lytle, 7 App. Div. 553, 40 N. Y. Supp. 153; Rochester v. Coe, 25 App. Div. 300, 49 N. Y. Supp. 502; Barker v. Floyd, 61 App. Div. 92, 69 N. Y. Supp. 1109; People v. Butler, 125 App. Div. 384, 109 N. Y. Supp. 900; Smith v. Moffat, 1 Barb. 65; Croswell v. Crane, 7 Barb. 191.

14. People v. Butler, 125 App. Div. 384, 109 N. Y. Supp. 900.

15. People v. Lytle, 7 App. Div. 553, 40 N. Y. Supp. 153.

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effectuate such object.[16] And, if the revisers make no note of any proposed change in the law, the courts will hesitate to construe a section so as to make a radical change in the law.[17] But the intent of the commissioners cannot control the legislature. The commissioners may have one intent, and the legislature may have an entirely different one. The function of the court is to ascertain the legislative intent and to disregard a conflicting intent of the commissioners, except in so far as the latter may throw light on the former. While the declarations of the codifiers may be useful, they cannot control subsequent legislative intent.[18] Especially is this so, when the statute as enacted departs from the language of the revisers.[19]

§ 186. Consolidated laws.— The Consolidated Laws of 1909, contain not only a General Construction Law which prescribes certain rules of general application for their interpretation, but there has also been enacted an independent statute regulating their construction. Chapter 596 of the Laws of 1909 provides in some detail as to the effect which shall be given to such laws, and to the act passed the same year making a series of amendments to the Code of Civil Procedure and to the Code of Criminal Procedure. In effect these statutory rules of construction require the courts to hold that no change in the law has been effected by the Consolidated Laws, the evident purpose of the legislature being a rearrangement of such statutes as were in force.[20]

16. Fielden v. Lahens, 9 Bosw. 436.

17. Hall v. Western Transp. Co., 34 N. Y. 284.

18. Stephens v. People, 19 N. Y. 549; People v. Conroy, 97 N. Y. 62; Forrest v. Forrest, 10 Barb. 46, 3 Code Rep. 141, 9 N. Y. Leg. Obs. 89, 5 How. Pr. 125.

19. Waddell v. Elmendorf, 10 N. Y. 170.

20. Contractors' Supply Co. v. New York, 153 App. Div. 60, 138 N. Y. Supp. 242; Montefiore Home v. Prendergast, 159 App. Div. 644, 144 N. Y. Supp. 953, affirmed without opinion 211 N. Y. 549, 105 N. E. 1090; Betts v. New York, 73 Misc. 503, 132 N. Y. Supp. 448; Dominick v. Stern, 79 Misc. 271, 139 N. Y. Supp. 59; Engleheim v. Illinois Surety Co., 85 Misc 588, 148 N. Y. Supp. 1072.

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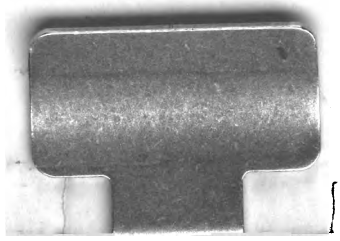

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